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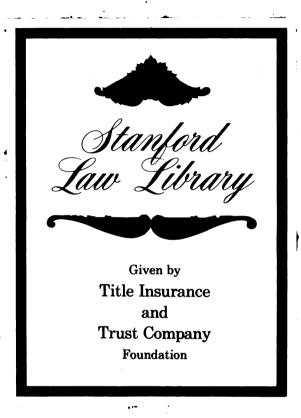
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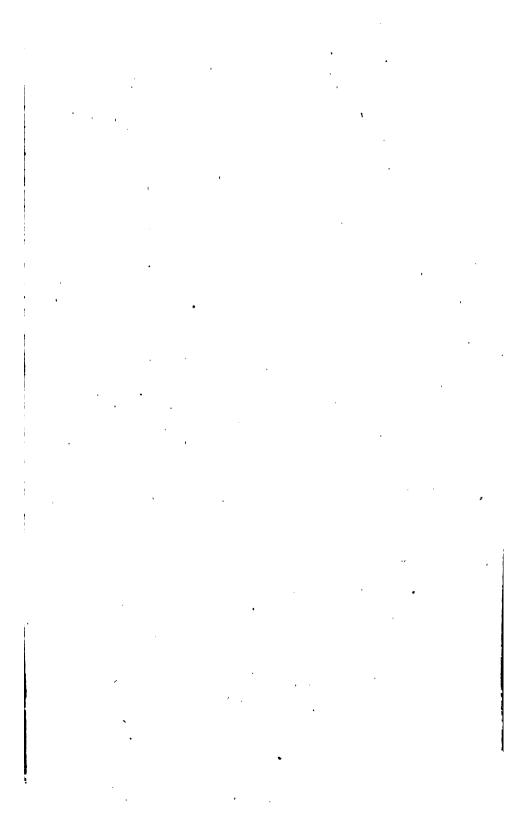
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## SYSTEM

OF THE

## FORMS OF DEEDS

USED IN SCOTLAND.

BY ROBERT BELL,

CLERK TO THE SIGNET,

LECTURER ON CONVEYANCING, APPOINTED BY THE

SOCIETY OF CLERKS TO THE SIGNET.

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## DEEDS OF SUCCESSION.

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THE forms which fall under this general head have been so far treated of in the preceding volume; and it remains only to explain, here, what relates to

- 1. The Entail.
- 2. The Marriage-Contract and relative Deeds.
- 3. The Forms by which Heritage and Moveables are fully vested in the Heir and Executor.

To these I proceed in their order,

## I. OF THE ENTAIL.

THE entail is a deed by which a proprietor conveys his estate to certain heirs under a limited right of property, so as to disable them from selling the estate, from burdening it with vol. v. \* A debt,

debt, or from altering or affecting the order and course of its succession.

To ascertain the effect of such a deed on the constitutional law of the state, or to draw the line beyond which such restraints are inconsistent with the rights of the community, are very foreign to the objects of this treatise. It is what relates to the form and constitution of the entail, that can alone find a place here; and I shall introduce it to the reader with such hints of its introduction into the practice of this country, as may lead to a closer study of its nature and history.

The object of the entail is to take the estate over which it extends, from under the protection of the common law of the land;—to form, for it, not only a new and peculiar law of property and fuccession, but one which shall hedge it round, and exclude it (in all questions with heirs, creditors and purchasers) from the operation of the common law; and which shall not permit any right of property to be exercifed on it, but under the force and influence of that fystem of rules which is provided by the deed itself. To frame a law of fucceffion that may regulate the destination of an estate in all future contingencies, would be no eafy

eafy matter, independently of the influence of the common rules of law, which are conftantly ready to break in, and to overturn the deftination; nor can it be an eafy task to establish peculiar rights of property, and to prescribe the form and manner in which these are to be exercised; when, in like manner, the general law of property is in opposition to these rules. We are not, therefore, to wonder at the many questions which have arisen from this form of settlement; nor will the conveyancer find a subject of study, whether considered in relation to the forms of its constitution, or the effects which it produces, more deserving of his serious attention.

It may appear, perhaps, that the right of entailing proceeds from our law having admitted of high notions of property; though, in truth, the power of entailing tends greatly to diminish property; fince, in so far as the just exercise of the right is exceeded by the grantor of the entail, in so far is the right of every succeeding proprietor diminished. To reconcile the right of entailing with principle, seems to have been no easy matter. The fundamental proposition of our law is, That every man may dispose of his property at pleasure, and under

fuch conditions as he may choose to annex to the gift, these conditions always accompanying and burdening the gift. But then, the obligation under which the receiver lies is only perfonal, while the full right of property is vested in him; and property must ever be affected by the deeds of the proprietor; of course, the conditions of the gift are incapable of creating a real right. To obviate this difficulty, it was necessary to limit the right of property. this view, it was declared, that the proprietor who contravened any of the conditions of the gift, should lose his right of property, and the act of contravention should be incapable of affecting the estate. It was by this device alone, that the right of a proprietor was held to be fo far limited and circumscribed, that, although he appeared as proprietor, yet were the conditions of the deed under which he possessed real and binding upon him, and upon all deriving right through him.

This restrictive clause, which came afterwards, under the act 1685, and in practice, to be distinguished into the irritant and resolutive clauses, is described by Hope, who flourished in the middle of the 17th century, in these words:

There is a new form found out (he is speak-

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ing of the power of the inhibition to fecure the conditions of the entail) which has these two branches; vig. either to make the party contractor of the debt to incur the loss or s tinsel of his right, in favour of the next in the tailzie; or to declare all deeds done in prejudice of the tailzie, by bond, contract, inf feftment, or comprising, to be null in law. It was not till the year 1662, that the Court of Selfion had occasion to decide on the power and effect of a deed guarded by fuch a clause, where the clause had gone on record.—The case in which the question occurred is collected by Gilmour, No. 39; the Viscount of Stormont against the Creditors of Annandale. The tailzie directed, that the heirs should not wiolate nor dissolve the tailzie, nor dispone, nor wadlet the estate, nor do any deed whereby the same might be evicted or comprised from them, without the special consent of all the perfons contained in the entail; and if any of the heirs contravened, it was declared that they should lose their right and title to the said infestment, and to the lands therein contained, is facto; and the faid charter and infeftment shall be null, and expire; and their rights thereto shall accrue to the next heir of tailzie.

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The Earl of Annandale, the heir of entail in possession, had contracted debts which were made the grounds of comprisings against the estate; when the Viscount of Stormont, the next heir of entail, brought a declarator against the Earl and his creditors, for having it found, that the Earl had demitted his right; that the comprisings, at the instance of the creditors, were consequently null; and that the purfuer should be entitled to enter as heir of entail, free from the debts of the Earl. In defence, it was maintained: 1. That clauses de non alienando, cum pacto de non contrabendo debitum, are not pleadable against a lawful creditor, unless they have been rendered public by inhibition; 2. The tailzie annuls only the contravener's right, but not the title of the creditor: 3. In case of contravention, the estate is destined to the heir of the contravener; and, as heir, the person succeeding must be liable for the debts of the contravener. The answer made to this, by the heir of entail, was; 1. Clauses de non alienando are not prohibited by law, and law reprobates no transaction that is not prohibited: On the contrary, fuch clauses are common, and make the lands return, on contravention, to the superior; nay, in wardholdings, the law itself introduces this condition.

tion. Therefore the clause de non alienando, in this tailzie, is the lex take et seudi, and real; and is as public, by entering the sasine, as it could have been rendered by inhibition: 2. The clause declaring the contravener's right to be null, and the estate to belong to the next heir, must mean the unincumbered estate, or it has no meaning at all; and it belongs to the heir, in consequence of the real interdiction of the tailzie: 3. That the Court ought to declare, that the heir's title is free of the Earl's debts, as if he were the heir to a person interdicted, whose bonds would be null, so far as they affected the estate.

- 'The matter, we are told, being at great
- flength debated from law, practique and reafon; the Lords repelled the alledgeances, and
- found that the purfuer should succeed to the
- estate free of Annandale's debts and burdens.
- whether he was heir of tailzie to Annandale
- f or Stormont, or to either of them, wherein
- he might take the most legal way as, by ad-
- vice, he should think fit. '.

We have an account of the same decision by Lord Stair, in the Institutes, B. 2. tit. 3. § 58, who says, that the Court was much divided, and the decision much affected by the publicity

afforded by the sasines. Thus we have the power of entailing established at common law, though it seems to have appeared to the great lawyers of that time, to be attended with all those dangers which certainly accompany this power; and Lord Stair complains that 'commerce is thereby hindered, which is the common interest of mankind; that the natural obligations of providing wives and children are 'thereby hindered, which cannot lawfully be omitted; and it is unreasonable so to clog 'estates descending from predecessors, and not to leave our successors in the same freedom 'that our predecessors left us,'

This way of thinking, so just and natural on such an occasion, joined to that doubt which seems to have prevailed on the point of law, must have rendered the act 1685, c. 22, a very desireable act for quieting the public mind; by establishing, on the one hand, the power of the proprietor; while, on the other, the exercise of that power was so guarded by forms, as to secure complete publicity to the entail.

Under these circumstances, it is not surprising that the act should be expressed in such a manner, as to render it doubtful, whether the legislature

legislature conceived itself to be conferring a new power on the proprietor, or only regulating the exercise of an old one. \* But what is '

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## \* First Parliament of James VII. c. 22. Act Concerning Tailnies.

Our Sovereign Lord, &c. statutes and declares, That it shall be lawful to his Majesty's subjects to tailzie their lands and estates, and to substitute heirs in their tailzies. with such provisions and conditions as they shall think fit, and to affect the said tailzies with irritant and resolutive clauses, whereby it shall not be lawful to the heirs of tailzie. to sell, annalzie or dispone, the said lands, or any part thereof, or contract debt, or do any other deed, whereby the samen may be apprised, adjudged or evicted from the other. substitutes in the tailzie, or the succession frustrate or interrupted; declaring all such deeds to be in themselves null and void; and that the next heir of tailzie, may immediately, upon contravention, pursue declarators thereof. and serve himself heir to him who died last infeft in the fee, and did not contravene; without necessity, any ways, to represent the contravener. It is always declared, that such tailzies shall only be allowed, in which the foresaid irritant and resolutive clauses are insert in the procuratories of resignation, charters, precepts, and instruments of sasine; and the original tailzie once produced before the Lords of Session, judicially, who are hereby ordained to interpose their authority thereto; and that a record be made in a particular register book to be kept for that effect, wherein shall be recorded the names of the maker of the tailzie, and of the heirs of tailzie, and the general designations of the lordships and baronies, and the provisions and conditions contained in the tailzie, with the foresaid irritant and resolunow of principal importance, is that fystem of regulations, by which the power of entailing was in future to be judged of. It is the observ-

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tive clauses subjoined thereto, to remain in the said register. ad perpetuam rei memoriam; and for which record, there shall he paid to the Clerk of Register, and his deputes, the same dues as is paid for the registration of sasines; and which provisions and irritant clauses shall be repeated, in all the subsequent conveyances of the said tailzied estate, to any of the heirs of tailzie: And, being so insert, his Majesty, with advice and consent foresaid, declares the same to be real and effectual, not only against the contraveners and their heirs, but also against their creditors, comprisers, adjudgers, and other singular successors whatsoever, whether by legal or conventional titles. It is always hereby declared, that if the said provisions and irritant clauses shall not be repeated in the rights and conveyances, whereby any of the heirs of tailzie shall bruik or enjoy the tailzied estate, the same omission shall import a contravention of the irritant and resolutive clauses against the person and his heirs who shall omit to insert the same, whereby the said estate shall ipso facto fall, accresce, and be devolved to the next heir of tailzie, but shall not militate against creditors and other singular successors, who shall happen to have contracted bona fide with the person who stood infeft in the said estate, without the said irritant and resolutive clauses in the body of his right. And it is further declared, that nothing in this act shall prejudge his Majesty as to confiscations, or other fines, as the punishment of crimes; or his Majesty, or any other awful superior, of the casualties of superiority, which may arise to them out of the tailzied estate: But these fines and casualties shall import no contravention of the irritant clause.

ance of these regulations, which mark the modern entail, and distinguish it from all other settlements. The term tailzie, from whatever origin it may have been derived, and however applicable to every species of destination by which the legal succession is cut off, has now other and peculiar marks of distinction, which render it applicable to that deed alone; which, under authority of the statute, protects the heir in the estate against the claims of creditors and purchasers. It is therefore to this deed, and to no other, that the term tailzie, or entail, ought to be applied.

In laying before the reader what relates to the entail, I shall present them in the following order:

- CHAP. I. The deeds and forms necessary to the constitution of the entail.
  - CHAP. II. The deeds necessary for renewing the right in the person of the heir.
  - CHAP. III. The acts of administration un-

### CHAP. I.

OF THE DEEDS AND FORMS NECESSARY TO THE CONSTITUTION OF THE ENTAIL.

The deeds and forms by which the entail is constituted, include not only examples of the deed of entail, expressed in a proper manner, and adapted to the different situations and circumstances of the parties; but also of the sa-sine following on the entail, by which its conditions enter the register of salines; with the forms of 'allowing' and recording the entail by which it enters the register of tailzies. Those deeds by which the feudal right of property and superiority are fully vested in the institute, or in the heir of entail, will also be explained.

This chapter will therefore consist of the following Sections:

- 1. Of the Form of the Entail.
- 2. Of the Safine on the Entail.
- 3. Of the allowing and registering of the Entail.
- 4. Of completing the Entail.
- 5. Of Deeds connected with this Subject.

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## SECT. L

### OF THE FORM OF THE ENTAIL.

THE form of the entail is now so generally understood, that there are few offices in which there will not be found a well expressed example of this deed. The three great objects of the deed: 1. To fave the estate from the debts of the person in possession; 2. To prevent him from felling or disposing of the estate: and, 3, To deprive him of the power of altering the destination and order of succession,—are always distinctly expressed, and not left to be implied; -the irritant and refolutive clauses are properly worded; -and the means of carrying on the fuccession in the event of an irritancy, or on the appearance of an heir where a nearer heir may afterwards exist, are pointed out; while the cases of adjudications, or of securities under the entail, for fecuring the provisions in favour of the husbands, wives, and children of the heirs, are, in general, carefully provided for: Yet diftinctions must be made; and the entail of a nobleman's estate, or where the succession to other entailed estates may open to the heir in possession, will require other regulations than what

what are necessary in the common case; and we have to remark too, the change in the manner of expressing the conditions of the deed, where the estate is conveyed directly to a stranger, from what is proper where the estate is conveyed by the grantor to himself as institute.

To bring these forms properly into view, examples shall be given of the entail, as affected by the circumstances that will most commonly occur, beginning with the simpler and less intricate forms.

Allow me, however, to observe, that before using these forms for the purpose of framing an entail, it is material for the man of business to consider whether the destination, in the form here, and in the intended deed, be the same; for if they are not, a strict adherence to the form here given, though proper in itself, in the circumstances of the case, may be improper for the intended deed. Thus, for instance, an entail is taken to the grantor and his heirs; and the conditions are all directed against the heirs of entail. If that form of expressing the conditions of the deed be used, where the lands are not taken to the grantor, but given to an institute and a series of heirs, the conditions will

not affect the institute, and the entail will be ineffectual. This rule is therefore most necessary to be attended to in the use of all forms of entails; and a want of attention to it, is, I am persuaded, the cause whence many of the errors of this kind, which have been judged of by our Courts, have arisen.

i. Deed of Entail by the grantor to himself, as Institute, and to certain heirs, with the conditions usually inserted in the entail of an ordinary estate; In the form of a Disposition with Procuratory and Precept.

Know all men, by these presents, that I, A, for the preservation of my estate in the line of succession hereby pointed out, have GIVEN, GRANT's ED and DISPONED, as I hereby, with and under the conditions, provisions, restrictions, limitations, exceptions, clauses irritant and resolutive, declarations and refervations after specified, GIVE, GRANT and DISPONE, to and in favour of myfelf, and the heirs male of my body, whom FAILING, to the other heirs of tailzie, as herein particularly after specified, ALL and SUNDRY the lands and estate of as herein after described, with all right, title and interest, which I, or my predecesfors or authors, had, have, or any ways might have had thereto, or to any part thereof; In which lands and others, with their pertinents.

I BIND and OBLIGE me, my heirs and fucceffors whatever, to infert and sease myself, and the heirs male of my body, whom failing, the other heirs of entail as aforesaid: BUT under the restrictions and limitations after mentioned, and with and under fuch other provisions, conditions, alterations, and clauses irritant and resolutive, as I fhall at any time appoint by a writing under my hand; AND THAT, by two several infestments and distinct manners of holding; THE ONE thereof to be held of me and my foresaids, in free blench farm, for payment of a penny Scots money, on the ground of any part of the faid lands, at the term of Whitsunday, if asked only; AND the OTHER of the faid infeftments, to be held from me and my foresaids, of and under our immediate lawful superiors thereof, in the same manner, and as freely in all respects as I hold, or might hold the same myself, and that either by resignation or confirmation, or both, the one without prejudice to the other; AND for expeding the said infestment by resignation, I hereby CONSTITUTE and APPOINT

and each of them, my lawful procurators, for me, and in my name, duly and lawfully to resign and surrender, as I hereby resign and surrender, simpliciter upgive, overgive and deliver, all and whole the said lands and estate of—(here the lands will be minutely described, with the parish and county, and and with all right, title, &c.) AND THAT in the hands of my lawful fuperiors of the fame, or of their commissioners in their names, having power to receive refignations, and to grant new infeftments thereupon, IN FAVOUR, and for new infeftment of the same, to be made and granted to me the faid A and the heirs male of my body; whom FAILING, to the heirs whomsoever of the body of the said heir male last infest, or entitled to have been infeft, AND the heirs male of the body of fuch heir whomsoever; whom failing, to the heirs whomfoever of the body of fuch heir whomfoever; whom ALL FAILING, to the heir whomsoever of the person last infest in the said estate, such heir being always descended of my own body; WHOM FAILING, to B, and to the heirs male of his body; WHOM ALL FAILING, to the heirs whom soever of the body of his faid heir male last infest, or entitled to have been infeft, and the heirs male of the body of fuch heir whomsoever; whom failing, to the heir whomsoever of the body of such heir whomsoever; WHOM FAILING, to the heir whomsoever of the person last infeft in the estate, such heir being always descended of the body of the said B; whom ALL FAILING, to my own nearest heirs and assignees whomfoever, heritably and irredeemably: The eldest female heir or heir-portioner, and the heirs of her body, excluding heirs-portioners, and fucceeding without division through the whole course of fuccession; as I hereby expressly declare, that VOL. V. the

the right of primogeniture shall take place amongst the female heirs called by the above destination. in the same manner as by law is established amongst male heirs; But always with and under the feveral provisions, conditions, limitations, restrictions, clauses irritant and resolutive, underwritten: viz, with and under the feveral conditions and provisions following: FIRST, That the whole heirs of tailzie under the above destination, and the husbands of the female heirs, shall be bound, as they are hereby bound, on the fuccession opening to them respectively, or to the wives of fuch husbands, to assume, use, and constantly retain the furname, arms, and defignation of A of A, as their proper furname, arms and defignation: SECOND, That the whole heirs of tailzie substituted to me herein, shall possess and enjoy the faid lands and estate under this tailzie, and charters, infeftments, precepts, and conveyances to follow hereon, and upon no other right or title whatever: THIRD, That the heirs male of my body, and the whole other heirs of tailzie above described, succeeding to me, shall obtain themselves timeously entered, inseft, and seised in the faid lands and estate, and shall not suffer the same to lye in nonentry for year and day; and fhall cause engross, and verbatim insert, in the charters and infeftments to follow hereon, and in all the subsequent procuratories and instruments of refignation, charters, fervices, retours, precepts.

cepts, and inftruments of fafine, and all other conveyances of the faid lands and estate, the whole course and order of succession hereby appointed by me, and the feveral conditions, limitations, clauses irritant and resolutive, declarations, and others contained in this tailzie, or to be contained in any other writing to be hereafter executed by me relative hereto: Fourth, That the heirs of tailzie substituted to me, and succeeding to my faid estate, shall fatisfy and pay, in due time, the whole feu duties, blench duties, nonentry duties, ministers' stipends, communion elements, reparation of churches and manses, schoolmasters' fees, public taxes, and all other public and parochial taxes, real burdens and duties whatfoever, payable forth of the faid lands and estate during their respective successions, and shall not fuffer the same to remain unsatisfied, or to become the ground of eviction and of adjudication of the faid lands and estate: FIFTH, That my faid heirs of tailzie shall, and they are hereby bound and obliged, respectively on their succeeding to the faid estate, to purge all adjudications or realdiligence which may happen to be obtained against the faid estate, or any part thereof, for not payment of any debts or deeds of mine, or for not payment of any real, or public, or parochial burden, or any other claim or demand to which the faid lands, or any part thereof, may happen by law to be subjected; and to procure discharges. and renunciations thereof, and that at least four years before the expiry of the legal reversion of fuch diligence as shall have been used against the estate, during the possession of such heirs of entail: On, where the diligence shall have been used against the said estate before the opening of the fuccession to any of the said heirs of entail, then. and in that case, such heir of entail succeeding to the faid estate, during the subsistence of an adjudication or other legal diligence, shall be bound and obliged to redeem the fame within two years after the fuccession to the said entailed estate shall have opened, or before the expiry of the legal reversion of the faid diligence, in case the same shall expire before the said term of two years is ended: SIXTH, That in case any of the faid heirs of tailzie, entitled to succeed to my said lands and estate, shall establish a right or title to the said estate, in his or her person, either upon the death, failure, or contravention of a former heir, and, after establishing such right and title, a nearer heir called to the succession shall exist; then, and in that case, such remoter heir who shall, either by the death, failure, or contravention of a former heir, have fo obtained a right and title to the faid lands and estate, established in his or her person, shall, upon the existence of the nearer heir, be bound and obliged to denude and divest themselves of the said lands and estate, to and in favour of such nearer heir; and the

the right and title of the person who had so established the right to the said lands in his or her person as aforesaid, and of the heirs who may have fucceeded to him or her, shall, ipso facto, cease and become void, null, and extinct, as foon as fuch nearer heir shall exist; and the said lands and estate shall immediately devolve upon such nearer heir, and he shall have access to establish a right to the faid lands and estate in his or her person, in the fame manner which would have been competent to him or her upon the failure or contravention of the former heir, had he or she been then in existence, or by adjudication, declarator, service, or any other legal manner; fo that the right of fuccession shall always devolve on the nearest heir according to the course of succession hereby established, and shall not be further diverted than to exclude the contraveners only, and without prejudice to the next heirs in their order; RE-SERVING nevertheless, to the person who shall have fucceeded upon the death, failure or contravention of the former heir, the whole rents and profits of the faid lands and estate, due at and preceding the term of Whitfunday or of Martinmas immediately before the birth of fuch nearer heir; and declaring, that the right of fuch nearer heir to the rents and profits of the faid estate, shall only commence at the said term at which the right of the person denuding is hereby declared to expire. But PROVIDED always, as it is hereby ex-

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pressly Provided and Declare othat not with standing, by the clause before written, the next heirs are not to be cut off from their right to fucceed through the contravention of a former heir, and the fuccession of remoter heirs; yet, in case any apprising, adjudication, or other legal execution, shall happen to be obtained against the fee or property of my faid lands and estate, and that the heirs in possession thereof, or called to succeed thereto, shall fail or neglect to redeem the same in manner as herein after directed; and that, by fuch failure and contravention, my faid lands and estate shall devolve upon any of the subsequent heirs of tailzie, nearer or more remote, who shall redeem the faid lands, and purge the faid diligence and execution, in manner herein after expressed; then, and in that case, the heir of tailzie, however remote, who shall have so redeemed the faid lands, shall not be obliged to denude or divest himself, or herself, of the said estate, in favour of any nearer heir, though existing either after or before the faid redemption; nor shall the right and title of fuch remoter heir so redeeming, become void and extinct by the prior or posterior existence of a nearer heir; but my said lands and estate shall remain and continue with the remoter heir who shall have purged the same, and execution thereagainst, and with the subsequent heirs of tailzie, called to the succession of the faid lands, next to her or him by the aforesaid fubstitution,

fubilitation, for ever thereafter, in the same manner as if the contraveners were all naturally dead, and as if such nearer heirs had never existed; Bur without prejudice nevertheless to any of the heirs of tailzie before mentioned, who shall not have been in existence at the time of incurring the said irritancy, by neglecting to purge the faid adjudications, or other legal diligence, within the time limited, and who, after their existence, shall be nearer in point of succession to the said lands and estate, than the remoter heir who shall have purged the faid adjudications, and other legal diligence; or, in case any of the said nearer heirs who shall have forfeited their right by neglecting to purge the faid adjudications or diligence, shall happen to be minor at the time of incurring fuch forfeiture; then, and in either of these cases, it shall be lawful to, and in the power of such nearer heirs as either did not exist, or were minors, at the time of incurring such forfeiture, within two years after their attaining the age of twenty-one. years complete, or fooner, if they shall think proper, to redeem the faid lands and estate from the faid remoter heir, who shall have purged the faid adjudications or other legal diligence; or from the next heir to him or her in possession of the faid lands at the time; and that by payment to him or her respectively, of the double of the fum which shall have been paid for purging fuch adjudications or other legal diligence,

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with the interest of such double sum, from the time that fuch adjudications, or other legal diligence, shall have been purged as aforesaid; and upon fuch redemption, the nearer heir, fo redeeming the foresaid lands, shall have access to establish a right and title to the said lands, in his or her person, in the same way which would have been competent to him or her upon the failure or contravention of the former heir, had fuch nearer heir purged the adjudications or other legal diligence; and the fuccession to the said estate shall thereafter, upon his or her death, devolve upon the next heir called to the succession, and so downward, through the whole course of succesfion, according to the feries of heirs herein before specified, in the same order, and under the fame provisions and irritancies, as if no such forfeiture of the faid estate, by neglecting to purge the faid adjudications, or other diligence, had ever been incurred; excluding always the person only who shall incur the forfeiture by not purging or redeeming as aforefaid. And these presents are also granted by me under the several provisions, limitations, and restrictions following; viz. First, That the widows and husbands of the said several heirs of tailzie, who shall die in possession of the said lands and estate, are hereby excluded from all right of terce or courtely over the fame, or any part thereof, any law or custom to the contrary notwithstanding: Second, That

in shall not be in the power of any of the faid heirs of entail hereby substituted to me, to alter, impovate, change, or add to this present tailzie, or nomination, or other writ or deed to be made by me, or order of succession therein prescribed; or to do any act or deed that may import or infer any alteration, innovation, or change thereof, directly or indirectly: THIRD, That it shall not be in the power of any of the heirs of tailzie substituted to me in manner foresaid, who shall succeed to my faid lands and estate, to sell, alienate, impignorate, or dispone the said lands and estate, or any part thereof, either irredeemably, or under reversion, onerously or gratuitously, or to gift, or dispose of the same; or to grant servitudes affecting the same; or to burden the said lands, in whole, or in part, with debts or fums of money, infeftments of annualrents, or any other burden or servitude whatever; nor to contract debts, nor grant deeds, whereby the faid lands and estate may be burdened or evicted from them; DECLARING hereby, that all fuch deeds to be granted, or debts to be contracted, in so far as the same may affect the faid lands and estate, shall be void and null, and the faid lands and estate shall nowise be affected or burdened therewith, or subjected, or liable to be adjudged, or any other ways evicted, either in whole or in part, for or by the debts and deeds. legal or voluntary, contracted or granted by any of the faid heirs hereby substituted to me, who shall

shall fucceed to the said lands and estate; and that, whether fuch debts or deeds shall have been contracted or done before or after their succesfion to, or obtaining possession of, the said lands and estate: Fourth. That it shall not be lawful to any of the faid heirs of entail, substituted to me in manner foresaid, who shall succeed to the said. lands and estate, to set tacks or rentals thereof for any longer space than twenty-one years, and without diminution of the rental, or for the lifetime of the fetter, with the diminution of the rental; DECLARING hereby, that all fuch tacks as shall be granted contrary to the terms of this condition, shall be void and null. And these presents are also granted by me, with and under the feveral irritancies following; viz. First, That in case any adjudication or other legal diligence and execution shall happen to be obtained for the purpose of affecting the fee of the said lands, or any part thereof, and that the person in possession for the time shall not redeem and purge the same. four years before the expiry of the legal reverfion of fuch diligence, then he or she shall forfeit his or her right and title to the faid lands and estate, and the same shall fall and devolve on the next heir of tailzie, in the order of succession, immediately following the contravener: And in case such next heir so called to succeed, and all or any other of the heirs fucceeding, by the death or contravention of the former heir, before expiry,

of the legal reversion of such adjudication or other legal diligence, in case the legal thereof shall expire sooner than the foresaid term of two years; that then, and in every fuch case, all and each of the heirs neglecting, and the descendants of their feveral bodies, shall amit, lose and forfeit, all right and title to my faid lands and estate; and the sole and only right thereto, and of redeeming the faid diligence, shall fall and accresce to any of the subsequent heirs of tailzie. nearer or more remote, who shall think fit to redeem the faid lands and estate, and purge the faid diligence before expiry of the legal thereof; Provided always, that in case two or more of the faid heirs be ready and willing to redeem the faid diligence, the nearer heir shall always be preferred to the benefit of fuch redemption; and the person so redeeming shall have access to establish a title to the said lands and estate in his or her person, in manner provided in the case of any other contravention, as herein after expressed; but always with and under the condition and power of redemption provided in favour of heirs who shall not be in existence, or who shall be minors. at the time of incurring the foresaid irritancy, by neglecting to redeem the faid adjudications or other legal diligence in manner foresaid: Second, That in case any of the said heirs of tailzie, who shall succeed to my said lands and estate, shall contravene the conditions and provisions, restrictions

restrictions and limitations herein contained, or to be contained in any other writing to be hereafter executed by me, or any of them; that is, shall not perform the faid conditions and provifions in every particular, or shall act contrary to the faid restrictions and limitations, or any of them, (excepting as is hereafter excepted); then, and in any of these cases, the person or persons so contravening, shall, for him or herself only, ipso facto, forfeit all right and interest which he or the shall then have to my faid lands and estate; and the same shall devolve on the next heir of tailzie, marked out by the destination herein contained, though fuch heir should be a descendant of the body of the contravener: And upon every fuch contravention, it is hereby expressly provided and declared, not only that my faid lands and estate shall not be burdened with the debts and deeds of the heirs of tailzie, as before provided; but also, that all acts and deeds contrary to the foregoing conditions and restrictions, or to the true intent and meaning of these presents, shall be of no force or effect against the other heirs of tailzie fucceeding to my faid lands and estate; and that neither the faid heirs, nor the faid estate, shall be any ways burdened therewith: And also, any of the heirs of entail, who, by the contravention of a preceding heir, may have a title to the estate, shall be at liberty to obtain declarators of irritancy of the contravener's right, (although

falthough such heir be descended of the contravener's body, or be in minority at the time); and fhall be at liberty to ferve heir to the person who died last vested and seised in the said lands and estate preceding the contravener; and thereby, or by adjudication, or by any other legal method, shall establish in his or her person, a right and title to my faid lands and estate, without being subject to the debts or deeds of the person or perfons fo contravening; and the faid heir or heirs fo obtaining possession, and the heirs of tailzie fucceeding to them in the order of the foregoing destination, shall be subjected to the whole conditions, restrictions, and irritancies, herein contained: As ALSO, it is hereby further PROVIDED and DECLARED, that the person or persons contravening or irritating his or her right as aforefaid, shall, from thenceforth, be excluded and debarred from the administration and management of my faid lands and estate, during the pupillarity and minority of the next heir of tailzie fucceeding upon the contravention, or upon the existence of a nearer heir, who shall thereafter exist and succeed to my faid lands and estate; and that, notwithstanding the contravener may be by law entitled to be tutor, curator, or administrator in law to the faid succeeding heir: And it shall be free to any person other than the contravener, to obtain gifts of tutory dative to fuch next heir fo facceeding upon any contravention, and

to any other nearer heir afterwards existing, succeffively; and that it shall also be free to the said heirs themselves, respectively, on their attaining the age of 14 years complete, to chuse curators, one or more, for the management of my faid lands and estate, and to declare such curators free from all omissions in their management: But ex-CEPTING ALWAYS from the several restrictions and irritancies foresaid, the powers and privileges following: viz. FIRST, That it shall be in the power of the feveral heirs of tailzie, who shall succeed to my faid lands and estate, and who shall die in the possession thereof, to provide and infest their feveral lawful wives and husbands respectively, in liferent provisions out of the faid lands and estate, and that, either by way of locality or annuity, provided always fuch locality or annuity shall not exceed a third part of the free rent, for the time, of the faid lands and estate, after deducting all former provisions which, in terms hereof, shall have been made by the said heirs of tailzie to their husbands or wives, and the yearly interest of provisions to younger children respectively, and such other real burdens, as may affect and burden the faid lands and estate for the time: SECOND, That it shall be in the power of the feveral heirs of tailzie, who shall succeed to my faid lands and estate, and who shall die in the possession thereof, to grant bonds of provision (in the terms after specified) to their lawful children:

dren, who do not succeed to the said lands, for payment of provisions to them, bearing interest from the grantor's death, the amount of which provisions in no case exceeding the amount of three years free rents, for the time, of the said lands and estate, after deducting the yearly interest of former debts and provisions, and liferent infeftments, to the wives or husbands of heirs of entail, and of all other burdens to which the faid lands may be then subjected; But DECLARING always, as it is hereby expressly provided and de-CLARED, that the infefrments, or other fecurities, to be granted for the provisions to the said wives or husbands, and the bonds of provision to the faid children, shall each of them contain an express condition, that it shall not be in the power of the creditors in the faid rights, or of their heirs or assignees, or others deriving right from them, to obtain adjudications of the fee of the faid lands or estate, for payment or security of the debts due to them respectively; but the same shall only affect the yearly rents of the said estate, and the legal of which adjudications shall never expire, so as to become irredeemable rights, either to the faid estate, or to the rents thereof; Bur DECLARING, that the persons of the said heirs of tailzie, and any estate real or personal belonging to them, other than the lands and estate hereby conveyed, and likewise the yearly rents of my faid lands and estate themselves, shall be liable to every legal diligence and execution, for payment

payment or fecurity of fuch annuities to wives or husbands, or provisions to children, (under the restriction after specified), as are hereby allowed to be granted, and of the interest and penalties corresponding thereto; And further, that in no event shall it be lawful for any of the said heirs of tailzie, to fell or alienate any part of the faid lands and estate, for payment of such provisions to husbands, wives, or children; nor shall the faid heirs be entitled to keep up any of the faid annuities or provisions, as debts or incumbrances on the faid entailed estate, by taking conveyances thereto, or by any device whatever: And the faid infeftments and bonds of annuity, in favour of widows or husbands, shall contain this further condition, that in case the said annuities shall be suffered to remain unpaid for above the space of two years complete, the annuitant shall not be entitled to a real action against the faid estate, for such bygone annuities, resting to him or her, as shall exceed the term of two years; nor shall it be lawful for him or her to fuffer an adjudication of the faid estate for payment of fuch bygones; and that the faid estate shall only be liable, at the utmost extent, to the payment of two years annuities, resting at one time, to each annuitant respectively, whatever may be the extent of the arrears of annuities due at the time; Referving always action against the person of the heir in possession, when these arrears fell due, and against his heirs and any other estate belonging

belonging to him. And the bonds of provision in favour of the said children, shall all and each of them contain this further condition, case any of the said children shall suffer the said provisions, or any part thereof, to remain unpaid. for the space of six years after their respectively attaining the age of twenty-one years complete: then and in that case, the same shall, ipso facto; become void and extinct, in so far as it was exigible out of any part of my faid lands and estate, or out of the rents thereof; referving always action against the grantor and his heirs general, and against any other estate real or personal belonging to him, not subject to this entail. it is hereby specially PROVIDED and DECLARED. that in case any of the heirs of tailzie, entitled to grant the faid provisions to husbands, widows, and children, shall neglect to insert the several conditions herein expressed, in the securities and obligations to be executed by them, that is to fay, the several conditions relative to the provifions in favour of hulbands and widows, in the fecurities and provisions given to them respectively: and the conditions relative to the provisions in favour of children, in the provisions executed in their favour: THEN fuch fecurities of obligations as shall want the respective conditions, shall be void and null, in so far as the same may or can affect the lands and estate hereby conveyed: and the person or persons contravening, by ne-VOL. V. glecting

glecting to infert the respective conditions in the feveral fecurities or obligations aforesaid, shall, for him or herself only, forseit all right and interest which he or she shall then have to my faid lands and estate; and the same shall belong to the next heir of tailzie in the course of fuccession, though descended of the body of the contravener, in the fame manner as if the contravener were naturally dead: And these presents are granted by me under the refervation and declaration herein after encroffed, and with and under fuch provisions, declarations, and conditions, as I shall hereafter direct and appoint, by a writing under my hand, at any time of my life, or even on-death-bed: AND I hereby empower my faid procurators to take instruments or documents in the premises, and generally to do every other thing therein which I could do if personally present, or which to the office of procurator in like cases is known to belong; promifing to ratify and approve whatever my faid procurators, or any of them, shall lawfully do, or rause to be done, in the premises: AND MORE-OVER, I hereby assign and dispone, to and in favour of myfelf, and to the heirs male of my body; whom failing, to the other heirs of tailzie forefaid, under the conditions, restrictions, limitations, and clauses irritant and resolutive, and exemptions above specified, and under such other conditions as I may think proper to add, and with and under the refervations herein after engroffed.

groffed, the whole writs, titles, and fecurities of the lands and estate hereby conveyed, whole clauses thereof, with all that has or may follow thereon; as Also, the rents and profits of the faid lands and estate: AND I hereby bind and oblige me and my heirs at law, and my executors and fuccessors, to free and relieve the said lands and estate, and the heirs of tailzie who shall succeed thereto, of all debts to which I shall be liable at the time of my death: Bur saving and RE-SERVING nevertheless, full power and liberty to me, at any time in my life; and even on death-bed, not only to alter the faid course and order of succession as to all the heirs of tailzie before specified, and to revoke or alter all or any of the conditions, provifions, restrictions, irritancies, and others before written, and to revoke this disposition; in whole or in part, at my pleasure, but also to fell, alienate, wadset, or dispone the said lands and estate, or any part thereof, or contract debts thereupon, or even gratuitously to dispose thereof, as I shall think proper: And LIKEWISE, to empower and authorise any of the faid heirs, or any other person or perfons whom I shall please to name, to suspend or dispense with the foresaid conditions, restrictions, and irritancies, or any of them, after my death, in the fame manner as I could have done during my life: ALL which revocations or alterations fo to be made by myself, or any other person to be appointed by me as aforesaid, shall

be made and done by writing under our feveral hands respectively; which writing or writings: shall be understood and taken as a part of this present deed of tailzie, and shall be as effectual to all intents and purposes, as if the same had been inserted herein: Bur DECEARING, that no revocation or alteration of these presents shall be inferred by legal implication or construction, BUT ONLY from an express writing under my hand; and in case of no such writing, then, although these presents shall be found lying in my custody. or in the custody of any other person undelivered, yet I hereby dispense with the nor delivery thereof, and declare the fame to be equally good and fufficient for every purpole, as if the fame had been fully executed by infeftment, and formally delivered to any of the faid heirs of tailzie, or to any other person for their behoof, any law or custom to the contrary notwithstanding: And in case these presents shall not be revoked or attered by a writing under my hand, then, although I should happen to take any right or infestment of the lands and estate hereby disponed, or any part thereof, to and in favour of myfelf, and my heirs and assignees whomsoever; or to and in fayour of any other heir than the heirs of tailzie hereby called; yet these presents shall be effectual against such other heirs, for compelling them to denude in favour of the heir of tailzie herein before specified, according to the order, and under the

the restrictions, conditions, irritancies, and others before mentioned. And LASTLY, I hereby grant full power, warrant, and commission, to

and each

of them, jointly and feverally, my procurators, or to any of the heirs of tailzie before specified, to cause produce this my disposition of tailzie before the Lords of Council and Session judicially, and to procure the same recorded in the register of tailzies, and to expede charters agreeably thereto in terms of the act of Parliament in relation to entails: And for the greater security, I consent to the registration hereof in the books of Council and Session or others competent, therein to remain for preservation; and for that purpose constitute

my procurators, &c.

AND I hereby DESIRE and REQUIRE you

and each

of you, my baillies in that part hereby specially constituted, that on sight hereof, ye pass to the ground of the said lands and others, respectively and successively after others, and there give and Deliver to me the said A, or to the heirs male of my body; whom sailing, to the other heirs of tailzie above mentioned, heritable state and sasine, real, actual, and corporal possession of all and whole the lands and estate herein particularly described; But always with and under the conditions, provisions, restrictions, limitations, ex-

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ceptions.

ceptions, clauses irritant and resolutive, declarations and refervations in my favour above specified, and no otherwise, which are hereby expressly appointed to be verbatim inferted in the infeftment to follow hereon, and in the whole subsequent investitures of the said lands and estate; and that by delivery to me, or to the other heirs of tailzie above described, or to my or their certain attorney or attorneys, in my or their names, bearers hereof, of earth and stone of the ground of the said lands and others foresaid, with all other fymbols necessary; And this in no ways ye leave undone; which to Do, I commit to you, jointly and feverally, full power by this my precept of fasine directed to you for that effect. In WITNESS WHEREOF. &c.

2. Deed of Entail by a wife with consent of her husband, to herself and her husband in liferent, and to the second branch of the family in fee, &c. But restricting the right of liferent of the parents by an allocation of part of the rents of the estate to the institute, in implement of an obligation come under by them in the institute's marriage contract, and giving a liferent provision to the youngest son: Containing also a provision, that in the event of the succession to the father's estate opening to the institute by the death of the eldest son, and the failure of the heirs of his body, the estate conveyed by this entail shall descend to the

The third son of the family; in which event, the provisions to the widow and children of the institute in terms of the powers conferred by this entail, are declared to be void. There is subjoined a ratification by the wife.

I, Mrs A, spouse of B Esq. of , and I the said B for myself, and as taking sull burden on me for the said A my spouse, and we both with mutual advice and consent; Whereas I the said A having succeeded by the death of M my brother to the estate of , and we being resolved, (in order to preserve the name of A of

), to lay the faid proper estate of under an entail in favour of ourselves, our own family, and the other heirs of entail herein after enumerated, in the order and right of fuccession. as herein after provided. THEREFORE, WIT YE us, under the conditions, limitations, clauses irritant and resolutive, and declarations afterwritten, to have given, granted, and disponed, as we hereby, mutually, and taking burden as aforesaid, GIVE, GRANT, and DISPONE, heritably and irredeemably, to and in favour of me the faid A, and of the faid B my husband, and to the longest liver of us two in liferent, and to and in favour of C our second son in fee, and the heirs male of his body; whom failing, to D our youngest fon, and the heirs male of his body; whom failing, to the other heirs of tailzie as herein particularly

after mentioned, ALL and SUNDRY the lands, barony, and estate of , lying and described in manner more particularly herein after defcribed; with all right, title, and interest, which I the faid A, or my predecessors or authors, had, have, or anyways might have had thereto, or to any part thereof; Bur with and under the conditions. limitations, clauses irritant and resolutive, provisions, reservations and declarations afterwritten; and also, under the exception and limitation upon us, as to our liferent right; and under the burden of one-fourth of the coal, &c. after our decease, to the said D our youngest son in liférent, all as particularly after-mentioned; and I the faid A, with the consent of the said B my husband, and we both with mutual confent, bind and oblige me, the faid A, my heirs and fucceffors whatsoever, to infeft and seise myself, and the said B my husband, and the longest liver of us two in liferent, but under the restriction and limitation thereof after-mentioned, and the said C our second fon, and the heirs male of his body in fee; whom failing, the faid D our youngest son, and the heirs male of his body; whom failing, the other heirs of tailzie as herein after mentioned, in the faid lands, barony, and estate of prehending as after specified; and that by two several infeftments and distinct manners of holding; the one thereof to be held of me and my foresaids in free blench, for payment of a penny

penny Scots money, on the ground of the faid lands, at the term of Whitfunday, if asked only: and the other of the said infeftments to be held from me, of and under my immediate lawful fuperiors thereof, in the fame manner, and as freely in all respects, as I the said A now hold, or might hold the fame myfelf; BUT ALWAYS with and under the conditions, limitations, clauses irritant and resolutive, provisions, reservations and declarations after-mentioned; and also under the restriction and limitation of our liferent right. and refervation in favour of the faid D as aftermentioned; and for that purpose, I the said A do hereby, with confent foresaid, oblige me to grant procuratories of refignation, and all other writs necessary; And for expeding the said infeftment by refignation, I, with confent of the faid B, and we both with mutual advice and confent, do hereby constitute and appoint

and each of them, jointly and severally, the lawful procurators of me the said A, for me, and in my name, duly and lawfully to resign, surrender, and simpliciter upgive, overgive, and deliver, all and whole the barony of (here the lands were particularly described) and that in the hands of the lawful superiors of me the said A, or of their commissioners in their names, having power to receive resignations and to grant new infestments thereupon, in savour and for new infestments of the same, to be made and granted to and

in favour of me the faid A myself, and the said B my husband, and the longest liver of us two in liferent, for our respective liferent rights allenarly. but under the restriction and limitation thereof after-mentioned, and in favour of the faid C our fecond fon, and the heirs male of his body in fee; whom failing, to the faid D our youngest son, and the heirs male of his body; whom all failing, to the heirs whatfoever of the body of the heir last in posfession; whom failing, to the heir whatsoever of the body of the heir immediately preceding, and fo forth backwards to the heirs whatfoever of the bodies of the different heirs in their order, until the fuccession return to the heirs whatsoever of the body of the faid C; whom failing, to and in favour of E and the heirs whatfoever of her body: declaring hereby, that as often as the succession to our faid lands shall happen to devolve upon females, the eldest of the female heirs, called in . the order above established, shall always succeed without division; whom all failing, to and . in favour of B, my faid husband, and his nearest and lawful heirs whomfoever, and their affignees, heritably and irredeemably, in due and competent form, as effeirs; but always with and under this express restriction, limitation, and qualification of our faid liferent right, viz. as we stand. bound in the marriage contract dated tered into betwixt the faid C and Miss now his spouse, to pay him in liferent, and until his fuccession to the said estate of , an year-

, and by which we renounced ly annuity of ` our liferent right to that extent over the faid estate: and that, fince entering into the said obligation, we have agreed to give him a liferent allocation upon the said estate, to the extent at least , in lieu and place of the faid obligation on us in the faid contract of marriage; AND that we, by our disposition of date . have actually, in implement thereof, disponed and made over to him, certain parts of the faid estate and , as prefently tenanted and pofbarony of fessed, and as specially described therein, amounting somewhat above of yearly rent, and have thereby taken him bound, on his acceptation thereof, to renounce the faid obligation on us in his contract of marriage: Now, we hereby not only RENOUNCE our liferent right of the lands fo allocated and disponed to the said C in liferent, in terms of the faid disposition thereof by us to him; Bur we hereby RESTRICT and LIMIT our liferent right to the remaining lands and ba-, as above described, and not rony of contained in the faid disposition to him; and the fame is hereby restricted accordingly: AND FUR-THER, under this burden and refervation, viz. THAT as we, by our disposition and affignation, , disponed and made over to the dated faid D, our youngest son, in liferent, after our decease, for his better subfishence, one-fourth part of the profits or free produce of the coal in the faid barony

barony and estate, with one half of the power of management and working the fame, under the conditions therein mentioned; So, we hereby BURDEN this present disposition, conveyance and entail, and the heirs fucceeding in virtue hereof, with the faid liferent in favour of the faid D, and declare the same a burden hereon accordingly: AND FURTHER, with and under the conditions, limitations, clauses irritant and resolutive, provifions, refervations and declarations regarding the faid heirs of entail under written; viz. With and under the condition, as it is hereby expressly provided and declared, that the faid C, and the heirs of his body, succeeding to the said estate of , in virtue hereof, shall be obliged conftantly to use, bear, and retain the surname of , and the arms and defignation , in all time after their succession of to the faid lands and estate of and others, in virtue of this deed of entail; with liberty nevertheless to him and them, of adding or conjoining any other name or arms thereto; ALso with this condition, that the faid C, or the first heir of entail succeeding to the said lands, barony, and estate, in virtue of this deed of entail, shall be held and obliged to record the same in the register of tailzies, as also in the books of Council and Session, in case the same shall not be recorded during the lifetime of me, the faid A, or of my faid husband, and that within year and day

day after the decease of the longest liver of us two, in case such heir shall have attained majority, and be within the kingdom of Great Britain at the time; but in case of the heir being minor. or furth of the kingdom of Great Britain, then within year and day of his or her attaining majority, or arriving in Great Britain respectively: but without prejudice nevertheless to any other of the faid heirs of entail to apply for recording this deed fooner, in case they shall choose to take the necessary steps for that purpose: And also with this further condition, as it is hereby specially provided, That the faid C, and the whole heirs of tailzie above specified, shall take and posfess the said entailed estate in virtue of this deed of entail alone, and upon no other title or right whatever; and that they shall use any other rights. they may happen to acquire as additional and collateral titles only, and for the purpose of Arrengthening this deed, and no other: FURTHER, that the faid C, and the whole heirs of entail before named, in the order of their nomination and right of succession aforesaid, shall be obliged to cause ingross, and verbatim insert. the whole foresaid course of succession, and any further order or nomination of succession to be hereafter appointed by me the faid Mrs A, with confent forefaid, at least, so far as shall be subsequent to the heir then in possession, or succeeding to the possession, for the time; together with the **feveral** 

feveral conditions, limitations, clauses irritant and resolutive, and whole other clauses contained in this procuratory of refignation; and that in the charters and infeftments to follow hereon, and in all future charters, special retours, and instruments of fafine of the faid lands, excepting only the condition with respect to recording this entail, which they shall not be obliged to repeat after this entail shall have been duly recorded; and likewise with this further condition, that in the event of any female heir of entail fucceeding to the faid lands and estate in virtue of the destination herein contained, it shall not be lawful to: nor in the power of, the husband of such female heir of entail, to do any act or deed whatever which may hurt his wife's right and interest in the faid lands or rents, or which may have the effect of carrying off the rents from her; nor shall his debts or deeds of any kind anyways affect the faid lands and estate, or rents thereof; nor shall the faid estate or rents be affected by any diligence following on the debt of fuch hufband: But the liferent right and power of management of the faid entailed estate shall remain free and unincumbered, notwithstanding the debts and deeds of the husbands of such female heirs of, entail, or the diligence following thereon: AND with and under the limitations and restrictions underwritten, viz. That it shall noways be lawful to. nor in the power of the faid C, or of any of the

the foresaid heirs of entail, to innovate, alter, infringe, or add to this present tailzie, or the order and course of succession hereby established, or do. or grant any act or deed whatever that may infer any alteration, innovation, change, or addition to the same, directly or indirectly: Also, with and under this further limitation and restriction. That it shall not be lawful to, or in the power of the faid C, or of any of the faid heirs of entail, to fell, alienate, dispone, burden, or give away the lands and estate foresaid, or any part thereof, either for onerous causes, or gratuitously, irredeemably, or under reversion, in any fort, or by any mode known in law; or to wadfet the fame, or any parts thereof; or to grant infeftments of annualrents upliftable furth thereof; or to burden the faid lands with any fervitudes, or other burdens; or to contract debt, grant bonds, or any other writs, deeds, or fecurities; or to do any act, civil, criminal, or treasonable, that shall be the ground of any adjudication, eviction, or forfeiture of the faid entailed estate, or any part thereof, or that may anyways affect or burden the fame: NEL-THER shall the said lands and others, or any part thereof, be affectable by, or subject to any terce in favour of the wife of the faid C, or to any terce or courtefy to the wives or husbands of any of the faid heirs of entail, or to any other legal claim whatever, competent to the faid wives or husbands; NOR for provisions to younger children.

dren, further than as power is hereafter given to provide these, agreeably to circumstances, in the different events after mentioned: But with this EXCEPTION, that it shall be lawful for the said C. and the male heirs of entail that shall be married, notwithstanding what is above stated, to grant liferent infeftments to their wives for any annuity not exceeding one-fourth part of the annual free rents of the estate at the time of granting (after deduction of all public and parochial burdens) or to grant liferent localities of certain parts of the estate (the mansion-house. gardens, and enclosures adjacent thereto excepted) to the extent of one-fourth of the free-rent annually, after allowance and deduction of the faid annual public and parochial burdens: Bur DECLARING, that if, during the lifetime of the faid D, the faid C shall succeed to the estate of (the father's estate)—whereby the faid lands and estate hereby entailed, will fall and belong to the faid D, to be in manner hereinafter more particularly expressed, and shall, either previous to his fuccession of the estate of -(the father's estate)—or thereafter, grant, or have granted, a liferent infeftment or provision, or given a locality over any part of the estate hereby entailed, in favour of his wife; THEN, it is hereby expressly DECLARED, that the faid liferent infeftment, or provision or locality, shall ipso facto become void and null, and shall noways affect the faid estate

or the rents thereof; nor shall the faid D, or his faid heirs, be liable to pay the fame, it being our intention, that the faid C shall, in that event, pro-

yide his widow out of the estate of

(father's estate)—or from any other funds belonging to him: As ALSO, it shall, in like manner, be lawful to the female heirs of entail that shall be married, to grant liferent infeftments or localities to their husbands, to the extent of one-fourth of the then remaining free rent annually to each husband; But neclaring, that no more than two liferents or localities at one time can subfift or burden the faid entailed estate: AND ALSO, with this further exception, that it shall be lawful to the faid C, and to the faid heirs of tailzie fucgeeding to him in the faid estate, in their order. to grant bonds of provision to their younger children other than the heir who is to fucceed to these lands, for payment of such sum or sums, bearing interest after the grantor's death, as shall not in the whole exceed, in case there should be only one child other than the heir, one year's free rent of the faid estate, and if there should be two younger children, one year and a half's free rent, or if three children or more, two years' rents of the faid tailzied estate. But DECLARING, that efter the provisions for the younger children have been granted to the amount of the faid two years free rent of the estate at the time, the heir of entail then in possession, and the other succeeding heirs VOL. V.

heirs of entail to him, shall be obliged to allocate. fet aside, or assign over, one half of the then free rents for the payment of the faid provisions to the younger children, that so the rent of the efate may not ultimately be totally evicted by the provisions for younger children, and the intention hereof be thereby totally disappointed: DECLARing nevertheless, that if, during the life of the faid D, the faid C, or any of the heirs of his body. shall succeed to the estate of (the father's estate)—and shall grant, or shall have previously granted, provisions to his younger children, in terms of the powers last above written; THEN, and in that event, the faid provisions shall, ipso facto, become void and null, and shall in noways affect the estate hereby disponed, or the rents thereof; nor shall the said D, or his heirs above mentioned, be obliged to pay the same; it being our intention that the faid C shall, in that event, provide his widow and children out of the faid e-(his father's estate)—or out of flate of any other funds belonging to him. AND FUR-THER PROVIDING, as it is hereby specially PRO-VIDED and DECLARED, that no adjudication, nor other heritable diligence, shall be competent against the said estate, for payment, either of the annuities to widows or furviving husbands, or for payment of the children's provisions, but the obligations therefor, and affignments of the rents and localities, shall only remain as corroborative focurities

securities for the more certain payment of both principal and interest thereof, until the same be thereby finally extinguished; and if any adjudication, or other legal heritable diligence, be led and obtained, the fame is hereby declared to be void and null, in so far as respects the lands and estate hereby entailed: Neither shall it be lawful to the faid C, or to any of the faid heirs of entail, to fell or dispose of any part of the said lands for payment, either of the said annuities or of the children's provisions, nor shall any more than one half of the free rents of the faid lands be at any one time subjected and liable to any legal execution for payment of the faid whole provifions and interest thereof: And with this further limitation and restriction, that it shall not be lawful to, nor in the power of the faid C, or any of the heirs of entail substituted to him, to grant feus of any part of the faid lands and estate, or of the coals or other minerals therein; BUT with this exception, notwithstanding, that the said C, or any of the heirs of entail fucceeding to him, may feu any small piece of ground, not exceeding one quarter of an acre, English measure, to one person, providing that the said feu shall be distant from the mansion-house at least 600 vards in a direct line, and that by the feu charters the entries of fingular successors shall be left untaxed; neither shall it be lawful to the said C, or to any of the heirs of entail substituted to him, to

D 2

grant any leafe of the coal, nor to fet tacks of all or any part of the faid entailed estate for any longer period of time than twenty-one years; and that neither he, nor any heir of entail, stall have power to fer any tacks with a diminution of the rental, excepting only in case of necessity, in which case only it shall be lawful to him or them to: fet tacks for any space not exceeding seven years, at the highest rent that can be got at the time. without taking a grassum, or entry-money; and that fuch tack shall only be renewed for the like space, and without graffum, until the said lands shall be again raised to the former rent: AND FURTHER, with and under this limitation and condition, that it shall not be lawful to the said C, or any of the heirs of tailzie, to confent that any special adjudication of any part or parts of the faid estate shall in any ways be obtained; AND with and under the irritancies following, viz. THAT if the faid C, or any of the heirs of entail substituted to him in manner foresaid, shalf contravene any of the conditions, provisions, or limitations herein contained, either by not fulfilling and performing the faid conditions and provisions, or any one of them; or by acting contrary to the faid restrictions and limitations, or any one of them, excepting as is above excepted: THEN, and in any of these cases, the person so contravening, by omitting to fulfil the faid conditions and provisions, or acting contrary to the faid

faid restrictions and limitations, or any one of them, shall, for him or herself, forfeit and lose all right and title to the faid lands and estate, in the fame manner as if the contraveners were naturally dead; and the right thereof shall devolve upon the next heir of tailzie, though descended of the contravener's body, to whom it shall be lawful. whether major or minor at the time, to pursue declarator of irritancy, and to make up titles to the faid lands and estate, by serving heir to the person last infest therein before the contravener. or to the contravener himself or herself, without being in anywife liable for the faid contravener's debts and deeds, or to make up titles by declarator or adjudication, or in any other way by law competent; AND with and under this special irritancy on the faid C and his iffue, viz. That in case, during the life of the said D, or the existence of an heir male or female of his body, the faid C, or any of his iffue foresaid (through the , his elder brother and his failure of isfue), shall succeed to the estate of father's estate)—THEN the faid C, or his faid issue so succeeding, during the life of his faid Prother D, or of his issue as aforesaid, shall, from thenceforth, after fuch succession, lose all right and title in virtue hereof, or otherwife, to the lands and estate, and coal and others hereby conveyed; And I, with confent foresaid, hereby declare the faid C and his issue, in the event forefaid, to be totally denuded of the said estate and others hereby entailed, as long as the faid D shall live, or as long as there shall exist a descendant of his body, whether male or female; and the faid estate shall, in that event, immediately fall, accresce, and belong to the said D, our youngest son, or to the heirs of his body a It being our express will and intention, that neither the faid C himfelf, nor any of his iffue, should, during the life of the said D, or of any of his issue, enjoy at the same time both the e-(the father's estate)—and the states of and others hereby entailed; estate of but that, as foon as the faid C or his forefaids shall, during the life of the said D or his issue. fucceed to the faid estate of (the father's estate)—they shall immediately from thence forward lose all right to the estate of and others hereby entailed, in the same manner as if the name of the faid C had not been herein inferted, nor he or his iffue hereby called to the fuccession, with the single exception afterwritten, conferred upon him for the fole purpose of enabling him or them to complete the title of the faid new heirs of tailzie. And the faid estate of , hereby entailed, shall immediately thereupon belong to the faid D and the heirs of his body; and the faid D and his foresaids shall immediately be entitled to take and hold the faid estate, pursue declarator of irritancy if necessary,

and make up legal titles thereto, in the manner required by law, agreeably to the meaning of this entail: DECLARING, however, that the right of the faid D and his foresaids to the rents of the estate hereby conveyed, shall not commence till the first Whitfunday or Martinmas after his brother the faid C, or his foresaids, shall have succeeded to the faid estate of (the father's estate).— AND it is hereby expressly DECLARED, that upon the failure of the faid D, and the heirs of his body, the faid lands and estate above mentioned shall again belong and return to the said C and the heirs of his body, called to the succession in manner first above written: RESERVING ALWAYS to the faid C and his foresaids full power, in the event of the faid fuccession opening to the faid D and his forefaids, to renew the above entail in favour of the faid D and his foresaids, under the whole conditions and restrictions herein contained, and in no other ways. And it is also hereby PROVIDED and DECLARED, that all the debts and deeds of the faid C, and the faid succeeding heirs of tailzie, or of any one of them, contracted, made or granted, as well before as after their fuccession to the said estate and others foresaid, in contravention of this present entail, and of the conditions, provisions, restrictions and limitations herein contained; and all adjudications, or other legal execution or diligence which may be obtained or used on the same, excepting as is above excepted.

excepted, shall be void and null; with all that has or may follow thereon, in fo far as they might anyways affect the faid lands and effate: Pro-VIDING and DECLARING ALWAYS, that if the faid C, or any of the succeeding heirs of sailzie above mentioned, shall incur any of the foresaid irritancies, and that the same be declared by any of the faid heirs of entail, and that thereupon the faid tailzied estate shall belong to the next hely of tailzie existing at the time; THEN, and in that tase, the heir who has thereupon obtained the right to the faid tailzied estate, by declarator of irritancy, or other method competent in law, and shall thereupon have obtained him or herself infeft in the faid estate, shall from thenceforth hold and enjoy the same, until a neater heir small exist, who would have succeeded in consequence of such forfeiture, had he been in existence; and on the existence of such nearer heir, the said heir in possession for the time shall be obliged to denude of the faid tailzied estate, and the same shall again belong to the nearest heir of tailzie, entitled to succeed, by the said order of succession, after the heir who had forfeited his right in manner forefaid; and in case of the heir in possession, either not denuding, or refusing to denude, then it shall be competent to fuch nearer heir to purfue a declarator of irritancy against him, or to make up titles by service to him or her, as if he or she were naturally dead; DECLARING, however, that the

she right of furth nearer heir to the rents of the Lid efiste shall not commence till the first Whitfunday or Martinmas after his or her existence. and that the heir in possession shall have full right to enjoy the rents till that time, without being accountable therefor: And further, Provid-END and DECLARING, that it shall not be lawful to the faid C, or to any of the heirs of entail substituted to him, after decree of declarator (if contraveners) shall have been obtained against them. to have the management of the forelaid lands and afface, as administrator-in-law to the next heir of tailzie, or to any other of the heirs, all fuch contraveners being hereby expressly debatred from the possession or management of the said entailed Estate after declarator of contravention: AND if. at any time, the contravener happen to be administrator-in-law to a nearer heir in possession. in that cafe, and as often as the fame shall happen, it shall be competent to any other person to obtain gifts of tutory-dative to fuch heirs of tailzie, during their pupilarity; and it shall be lawful to Each minor heirs, on the expiry of their pupilavity, to chuse curators for him or herself, during his or her minority, in exclusion of the contravener, and to declare them free of all omissions In their administration, any law or practice to the contrary notwithstanding; and with and under fuch other and further conditions, limitations, restrictions, irritancies, and provisions, as I the faid

faid A, with confent foresaid, by any writ under my hand at any time in my life, shall hereafter think fit to appoint; all which conditions, provisions, limitations, restrictions, burdens, irritancies, and resolutive clauses before written, and such others as hereafter may be added by any separate deed, shall all of them be verbatim engrossed in the charters and infeftments to follow hereon: and in all the subsequent charters, special retours, and infeftments of the faid estate, in manner as before provided, under the pain of nullity of the faid rights and infeftments, and under certification that the person or persons neglecting to insert the same in their charters and infestments shall, ipso facto, lofe and forfeit all right and title to possess, and be deemed contraveners; and with and under which conditions, provisions, limitations, restrictions, burdens, irritancies, and resolutive clauses before written, these presents are granted, and are to be accepted of by the different heirs aforefaid, and in no other ways: Acts, instruments, and documents in the premifes to ask and take, and generally all and fundry other things requifite and necessary thereanent, to do, as fully and freely in all respects, as I might do if personally present, or which to the office of procuratory in fuch cases is known to belong; promising to hold firm and stable whatever my said procurators shall lawfully do in the premises. AND I, the said Mrs A, with confent of the faid B, my husband, and we both, with

with mutual affent, do hereby assign and MAKE OVER, to and in favour of ourfelves and the longest liver of us two, in liferent, under the restriction aforefaid: and at and after the death of the long. est liver of us two, I assign, under the conditions, restrictions, burdens, provisions, limitations, irritant and resolutive clauses before mentioned, to and in favour of the faid C, our fecond fon, and the heirs male of his body in fee; whom failing, to the heirs of tailzie before specified, the whole writs, rights, and title deeds of the lands and estate foresaid, hereby entailed, with the whole procuratories of refignation, precepts of fafine, and all other clauses therein contained, and all that has followed or may follow on the same; and I, with confent foresaid, dispense with the not delivery hereof in my own lifetime, and declare the fame, wherever found at my death, to be equally good and effectual, to all intents and purposes, as if the same had been fully executed by infeftment, and finally delivered to the faid C, or to any other person for his behoof, and the behoof of the subsequent heir of entail before named; AND I hereby, with consent foresaid, grant full power, warrant and commission to

my procurators, or to the faid C, or any of the heirs of entail named or to be named by me, to cause present this deed of entail before the Lords of Council and Session judicially, and to procure the same allowed and recorded recorded in the register of tailzies, and to expede charters and infestments agreeably thereto, in terms of the act of parliament concerning tailzies, and that, either in my lifetime, or after my death; And, for the greater security, I consent to the registration hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation; and that all execution competent, may follow on a decree to be interponed thereto, in common form; and, for that purpose, constitute

MY PROCURATORS. In WIT-NESS whereof, &c.

## Ratification of the preceding Entail.

At Edinburgh, the years. In prefence of W. M'F., one of his Majesty's Justices of the Peace for the county of Edinburgh; as also, in presence of me notary public, and witnesses subfcribing, compeared personally the within designed Mrs A, and being furth of the presence of her faid husband, she RATIFIED and APPROVED, and hereby RATIFIES and APPROVES of the within written deed of entail, as contained in the preceding pages in the whole heads, articles, and clauses thereof; And Declared that she was noways coacted, compelled, or feduced to grant and concur in the same, but that she executed the fame of her own free will and motive; AND GAVE her

her great OATH, that she would never quarrel or impugn the same, directly or indirectly, any manner of way in time coming, as she should answer to God. Whereupon, as procurator for the whole disponees and heirs of entail within mentioned, ASKED and TOOK INSTRUMENTS in the hands of the said notary-public subscribing. These things were so acted and done, place, day, month, and year foresaid, before, and in presence of, L and M, both writers in Edinburgh, witnesses to the premises specially called and required.

L., witness.

A. W M'F. *J. P.* J K, *N. P*.

3. Deed of Entail of a secondary Estate executed by an Heir in possession of an Entailed Estate, under condition, that on the succession to the principal Estate of the family opening to the Heirs of Entail in the secondary Estate, the Heir to whom the succession so opens shall be obliged to grant a new Entail of the secondary Estate to the next immediate Heir in that Estate.

Know ALL MEN BY THESE PRESENTS, I Miss

B, considering that the deceased A, by disposition and deed of entail, dated

recorded

recorded in the books of Council and Session, for the causes therein specified, gave, granted, and disponed, under the conditions and provisions therein specified and after inserted, to and in fayour of himself and the heirs whatsoever lawfully to be procreated of his body, and the heirs whatfoever of their bodies; whom failing, to the deceased B; whom failing, to me the said B, and the heirs whatfoever of my body; whom failing, to the other substitutes and heirs of tailzie therein and after mentioned, ALL and WHOLE , and others therein menthe lands of tioned; and under which disposition and deed of entail, the faid deceased B was served heir of tailzie and provision to the said deceased A in the lands of ' , and others, conform to retour of his general fervice expede before the Sheriff of Edinburgh, on the AND that the faid A, by another disposition and deed of entail, of equal date, and recorded in the books of Council and Session, for the causes and considerations therein expressed, gave, granted and disponed to and in favour of himself, and the heirs whatsoever lawfully to be procreated of his body, and the heirs whatfoever of their bodies; whom failing, to me the faid B, and the heirs whatfoever of my body; whom failing, to the other fubstitutes and heirs of entail therein and after mentioned; but with and under the conditions, provisions, restrictions, limitations.

limitations, exceptions, clauses irritant and resolutive, declarations therein specified and after mentioned. ALL and WHOLE : AND WHEREAS, it is, by the disposition and tailzie last above mentioned, inter alia, specially provided and declared, that in the event of the lands of , and others, contained in the other deed of entail first above mentioned, executed by him the faid A, through the failure of the heirs under that entail, devolving upon the heirs called to the fuccession by the said other entail, so that one person shall have right to both estates; then, and in that case, such heir having right under both entails, shall be bound and obliged, immediately after both fuccessions shall have opened to him or her, to denude of the lands of and shall convey the same by a regular disposition and deed of entail to and in favour of C, and the heirs whomsoever of her body, if she or they shall be existing at the time; and in which , I the faid B now stand inlands of feft and feised, in virtue of a charter from the Crown under the great feal, granted to me as nearest and lawful heir of tailzie and provision, ferved and retoured to the faid deceased A. in terms of the retour of my general fervice expede before the Sheriff of Edinburgh, on the ; and that I now also stand infest and seised in the said lands of , contained in the faid other disposition

and tailzie first above mentioned, in virtue of a Crown charter granted to me as nearest and lawful heir of tailzie and provision served and retoured to the faid deceased B, conform to retour of my general fervice, expede before the Sheriff of Edinburgh, on the auA : seging the event provided for in the foresaid and above reentail of the lands of cited, has taken place by the lands of having also devolved on me in manner before specified, and that I the said B have now right to the lands contained in both entails above mentioned; it is therefore proper, that I should grant the disposition and tailgie underwritten, in terms of the foresaid clause of provision in the said before narrated. tailzie of THERE-FORE WIT YE me the faid B, to have given. GRANTED, and DISPONED, 38 I, in obedience to the condition foresaid, do hereby GIVE, GRANT, and DISPONE—(The deed then proceeds in the usual style of the entail, the conditions being regulated by the original entail, under authority of which this new deed is granted.)

4. Deep of Entail in implement of an Obligation in a Contract of Marriage, and failing Heirs of the Grantor's body,—Reserving a power of naming Heirs of Entail by a separate Deed—Containing a power of assuming the name and arms required on the succession of any other entailed

tailed property opening to the heirs of entail under this deed—Empowering the heirs to renew the entail in favour of subsequent heirs when the next in succession is guilty of any crime that may infer forfeiture of his property, and giving a power of selling to pay the debts of the entailer.

I, J B, considering that by the contract of marriage entered into betwixt me and Mrs C D, &c. dated, &c. I became obliged to refign my lands and estate after mentioned in favour and for new infeftment thereof to be granted to myself and the heirs male of the marriage thereby contracted; whom failing, to the heirs male of my body in any subsequent marriage; whom failing, to the heirs whomsoever of the marriage thereby contracted; whom failing, to the heirs whomfoever of any subsequent marriage to be entered into by me; whom failing, to fuch person or perfons as I had appointed, or should appoint, to fucceed to me in my faid lands and estate; whom failing, to my nearest heirs and assignees whomfoever, the eldest heir female succeeding without division, and assuming, using, and bearing the name of B. But reserving always full power to me to entail my fald lands and estate with and under fuch irritant and resolutive clauses as I might see fit, without prejudice nevertheless to the heirs of the faid marriage, their fucceeding thereto, in the first place, before those of any sub-VOL. V. sequent

fequent marriage as aforefaid; AND DECLARING, that I might prefer one of the children of the faid marriage to another, though out of the ordinary line and course of succession, if I should think fit fo to do: And that for the better preservation of my family, and the continuance of my faid lands and estate with my posterity and other relations in manner after written, and for certain other good causes and considerations, I am refolved to entail my faid lands and estate in manner after specified; THEREFORE, with and under the conditions, provisions, restrictions, limitations, exceptions, clauses irritant and resolutive, declarations and refervations after written, I GIVE. GRANT, and DISPONE to myfelf; WHOM FAILING, to J B, only fon procreated between me and the faid deceased Mrs C D, my wife, and the heirs male of his body; whom failing, to my other heirs of tailzie after named; whom failing, to my own nearest heirs and assignees whomsoever, the eldest heir female, and the descendants of her body, always excluding heirs portioners, and fucceeding without division throughout the whole course of succession of heirs whomsoever, as wellas heirs of provision, as often as the same shall descend to heirs female, and the daughter of the heir who was last in possession of my said lands and estate (whether such heir was served heir of tailzie or not) fucceeding always preferably to the daughter or daughters of any former heir, as often as the fuccession through the whole courfe

course thereof shall devolve upon daughters, excepting in the case herein after mentioned, AND WHICH I hereby declare to be my true meaning, notwithstanding of the foresaid general destination of heirs whomsoever, ALL and SUNDRY my lands; &c. &c. lying and described in manner after mentioned—(Obligation to infeft by two manners of holding.)—The procuratory of resignation is given for resigning, in favour and for new heritable infeftment of the same, to be MADE, GIVEN, and GRANTED to myself; WHOM FAILING, to the faid I B, only fon procreated betwixt me and the faid C D, my wife, and the heirs male of his body; WHOM FAILING, to the other heirs male to be procreated of my body; WHOM FAILING, to the heirs whomsoever of my body, the eldest heir female excluding heirs portioners, and fucceeding without division; whom failing, to any person or persons to be named by me at any time in my life, by any writing under my hand which shall be held as a part hereof; whom failing, to G; and the heirs male of his body; WHOM FAILING, to the heirs whomsoever of his body; whom FAILING, to K, and the heirs male of his body; WHOM FAILING, to the heirs whomsoever of his body; whom failing, to my own nearest heirs and affignees whomfoever, the eldest heir female, and the descendants of her body, always excluding heirs portioners, &c. (as before) excepting only in the case of heirs female of the marriage between me and the faid C D, who shall in all E 2 cales

cases succeed next after the heirs male to be procreated of my body in any subsequent marriage, but always with and under the condition, &c.-(The obligation to use the name and arms had this exception:) But DECLARING, that in case any of the heirs fucceeding to the lands and estate hereby disponed shall happen to have right to or succeed to any other entailed estate, by the rights and fettlements whereof they shall be obliged to use and have a surname, designation and arms, different from those herein before mentioned, under an irritancy, if they do not, of losing all right and title to fuch other tailzied estate; THEN, and in such case, it shall be lawful to the heirs possessing and succeeding to the lands and estate hereby disponed, to make an addition to the furname, designation and arms of B, of such other furname and defignation, and of fuch arms, agreeably to the rules of heraldry, as shall be appointed and required by the fettlements of fuch other tailzied estate, as long as the right to and possession of the same remains with my said heirs.— (The prohibition to sell had the following exception:) BUT with this EXCEPTION, that in case an apparent or presumptive heir of entail shall be forfeited or attainted for treason, or misprisson of treason, or be under any other legal incapacity which may disable them from taking, holding, or enjoying the faid lands, or that any process; forfeiture, or attainder, by collusion or otherwise, shall be brought or commenced against them;

THEN, and in any of these cases, it shall be in the power of the heirs of entail in possession for the time, and who shall be feudally vested in the faid estate under this tailzie, as often as such cases shall occur, by a deed under his or her hand, (even without confent of her husband, if such heir be a female and under coverture) to renew this my entail in favour of him or herself, and the heirs called after them to the fuccession according to the order before written, who shall be capable to succeed, leaving out and passing by such apparent or presumptive heirs and substitutes incapable of taking or holding the faid lands and estate, or against whom a process, forfeiture, or attainder shall have been brought or commenced. as faid is, and fettling the fame and the fuccession thereto upon themselves and the other substitutes before mentioned, but with and under the whole conditions, provisions, restrictions, exceptions, clauses irritant and resolutive, herein contained; AND with and under this EXCEPTION ALSO, that as often as the succession shall devolve upon females or heirs male descending of the bodies of females, it shall be in the power of such heirs female or heirs male descending of the bodies of heirs female who shall be in the fee of the faid lands for the time, as often as fuch event shall happen at any time hereafter, by a deed under his or her hand, to renew this prefent entail, with and under the conditions, restrictions, exceptions, and clauses irritant and resolutive E 3 herein

herein contained, and that to and in favour of her or himself, and the heirs male of her or his body: whom failing, to the heirs whomsoever of her or his body; whom failing, to the other heirs fubftituted after them by virtue hereof, thereby to fettle the fuccession of the said lands on the heirs male of their bodies respectively, in preserve of the heirs whomsoever of their bodies; AND with and under this further exception, that it shall be in the power of any of the heirs who shall have succeeded to the faid lands and estate, and shall be in the fee thereof for the time, to fettle and provide in the contract of marriage for her own eldest fon, or in any deed relative thereto, the whole or any part of the lands and estate hereby disponed, and immediately to cede the possession thereof to and in favour of their eldest son, but which settlement and provision shall always be to the same series of heirs herein before written, and with and un-DER the whole conditions, restrictions, exceptions, and clauses irritant and resolutive herein contained. (There was also this further exception:) But EXCEPTING and RESERVING always full power and liberty to the heirs fucceeding to the faid lands and estate, and DECLARING, that in case any other estate and effects, heritable or moveable, belonging to me at the time of my death, and not otherwife disposed of by me, shall not be sufficient to pay all the debts and obligations to which I for myfelf, as representing my ancestors, shall be subject and liable, and that the creditors there-

in shall affect the property of the said lands and others in any legal manner for forcing payment and performance of the faid debts and obligations: THEN, and in that case, it shall be lawful to, and in the power of the heir of entail in posfession for the time, to SELL and DISPONE as much of my faid lands and estate hereby disponed, as shall be judged necessary by the Court of Session, or other proper judicatory, for paying and fatisfying such debts and obligations, in as far as the faid heirs shall not be able to procure themselves relieved thereof, and the same satisfied and discharged out of my other estate and essects, heritable and moveable. (The other conditions of the deed were in common form.)

Destination of Heirs of Entail, executed by the Grantor of the preceding Entail, in virtue of the powers thereby reserved to him.

Know all men by these presents, me, I B of K; WHEREAS by disposition of tailzie of my estate of K, subscribed by me on the there is power and liberty referved to me to nominate and appoint such person or persons as I. shall think fit to succeed to my faid lands and eestate, failing heirs of my own body; AND I being resolved to exercise the said faculty in the manner under written, THEREFORE I have NOMINAT-ED and APPOINTED, as I hereby NOMINATE and APPOINT R B, my brother, and the heirs male of

his body; whom failing, &c. to succeed in the order above expressed to my said lands and estate, as the same are particularly described in the said disposition and tailzie immediately after the heirs whatfoever of my own body, AND WITHOUT PRE-JUDICE to the fublequent part of the fubilitation contained in the faid tailzie, which is to take effect on the failure of the heirs herein named, AND RESERVING ALWAYS full power and liberty to me, not only to nominate and appoint such other person or persons as I shall think fit to succeed to my faid lands and estate, failing the heirs herein named, and that by a writing under my hand at any time of my life, BUT ALSO to REVOKE, ALTER and CHANGE the present nomination at my pleasure; DECLARING, however, that if these presents be not revoked by me, the fame shall be valid and effectual, though found in my own custody, or in the custody of any other person, undelivered at the time of my death. And I consent to the RE-GISTRATION hereof in the books of Council and Session, or any other proper court, therein to remain for prefervation; AND ALSO in the REGIS-TER OF TAILZIES, as a part of the disposition and tailzie before mentioned; and, for that purpose, CONSTITUTE

MY PROCURATORS, &c. In WITNESS WHEREOF, &c.

<sup>5.</sup> Deed of Entail granted for an onerous cause, the Grantor having, under authority of an act

of Parliament, excambed part of an Entailed Estate for the lands hereby entailed, which Entail is granted by the Heir of Entail and the Sellers; the superiority of the lands purchased having formerly been part of the Entailed Estate.

Know all men by these presents, I, A, and B, with confent of B junior; WHEREAS by contract of excambion entered into betwixt me the faid A, on the one part, and us the faid B fenior and junior, on the other part, dated I the faid A bound and obliged myself to apply for an act of Parliament to enable me to fell and dispone to the faid B senior and junior, in seu part of the enfarm. the lands of tailed estate of A in the parish of AND I the faid A also shire of became bound to pay to the faid B fenior and juin money; AND nior, the fum of on the other part, and in exchange, we the faid B senior and junior, became bound to sell and dispone to the said A the lands of parish of and shire of AND whereas I the faid A have now obtained an act of Parliament allowing me to exchange the faid lands of with and for the faid lands of on condition of my fettling the faid lands of herein after described, upon myself and my heirs of entail in the estate of A in the manner herein after written, and

and that I have accordingly in feu farm disponed to the faid B senior and junior, the said lands of and have also made payment to to them of the faid fum of whereof we the faid B senior and junior, hereby acknowledge the receipt, renouncing all exceptions to the contrary; AND WHEREAS the superiority of the faid does already belong to and make lands of a part of the entailed estate of A standing in the person of me the said A, and that it is necessary. in compliance with the faid act of Parliament, to add the property or dominium utile of these lands to the said entailed estate in the manner under written: THEREFORE I the faid A, and we the faid B senior and junior, for our several rights and interests, have sold, ALIENATED and DIS-PONED, as we hereby SELL, ALIENATE and DIS-PONE, to and in favour of the faid A and the heirs male of his body; whom failing, to the heirs male of the body of D, &c.; whom failing, to the faid D, his heirs and assignees whatsoever, heritably and irredeemably, ALL AND WHOLE BUT with and under the condi-

tions, provisions, restrictions, limitations, clauses irritant and resolutive, exceptions, reservations, powers, faculties, and others expressed in the procuratory of resignation herein after written; AND to the effect that the right of property in the said lands may be consolidated with the right of superiority of the same in the person of the said A, and may remain inseparable therefrom

in all time coming, we hereby MAKE, CONSTI-TUTE, and APPOINT

and each of them, our lawful procurators, for us and in our name, to compear before the faid A immediate lawful superior of the said lands, or his commissioners in his name, having power to receive resignations ad remanentiam, and there, purely and simply, by staff and baton, as use is, to resign and surrender, simpliciter upgive, overgive and deliver, all and whole the said lands of

with the pertinents lying in the faid parish of and shire of IN THE HANDS of the faid A or of his faid commissioners in his name, as in his own hands, and for his own behoof, to the effect, that the right of property of the lands standing in our persons may be confolidated with the right of superiority of the same, and remain inseparable therefrom in the person of the said A and the heirs male of his body; whom failing, to the heirs male of the body of D, &c.; WHOM FAILING, to the faid D, his heirs and affignees whatfoever, BUT with and under the conditions, provisions, restrictions, limitations, clauses irritant and resolutive, exceptions, refervations, powers, faculties, and others following, viz. THAT in case daughters or heirs female shall happen to succeed to the lands and others above specified, THEN, and in that case, the eldest daughter or heir female shall succeed thereto without any division; and the said daughter or heir female

male fo fucceeding shall be held and obliged to marry a gentleman of the name of A, or who shall assume the name of A; and the said heirs of tailzie, as well male as female, and the faid heirs female and their hufbands fucceeding to the rights of the faid lands shall be held obliged and restricted to assume, take and retain. the furname of A, and to bear and use the arms of A; AND with this special PROVISION and DE-CLARATION, that it shall be noways lawful nor in the power of the faid A, or the heirs of entail above mentioned, or any of them, to sell, DIS-PONE, DILAPIDATE, or put away the lands and others above specified, nor the other lands included under the entail of the said estate of A, nor any part thereof; nor to break, innovate, or infringe this present tailzie, nor the said original entail of the estate of A: nor to contract debt. whereby the same or any part thereof may be incumbered or evicted by heritable fecurity or otherways; nor to do any other fact or deed, civil or criminal, by commission or omission, whereby the lands hereby fettled, or the said other lands of A, or any part thereof, may be anywise apprised, adjudged, evicted, or forseited, or otherways affected, in prejudice or defraud of the heirs of entail above mentioned; ALL WHICH DEEDS are not only declared void and NULL by way of exception or reply without declarator, in fo far as the same may burden or affect the said lands; BUT ALSO it is hereby PROVIDED and DECLARED, that

if the faid A or the heirs of entail above specified, shall contravene, and incur the clauses irritant aforefaid, or any of them, either by not marrying in manner above specified, or not assuming and retaining the faid name and arms of A, or shall break or innovate the faid deeds of entail, or either of them, or contract debts, or do any other deeds whereby the lands and others hereby fettled, or any of the faid lands and estate of A may be evicted from the faid A, or from them, or anyways affected in manner forefaid: THEN, and in any of these cases, the said A or the said persons so contravening, shall ANNUL, Lose and FORFEIT, for themselves allenarly, (without prejudice to other heirs), their right not only to the lands before mentioned, hereby fettled, but also to the remainder of the entailed estate of A; and the infestments and other rights in their persons shall from thenceforth become void, extinct and null, ipso facto, by way of exception or reply, and without any declarator to follow thereupon; AND it shall be lawful to the next immediate heir of entail in being for the time, who is appointed to succeed to the foresaid lands, by virtue of the tailzie and fubstitution above written, and of the tailzie and substitution of the estate of A, either to be served heirs in special in the said lands, and also in the faid estate of A to the person who died last vest and feised therein before the contravener, and thereupon to be retoured and infeft without being subject or liable to the contravener's debts or 'deeds:

deeds; or otherwife to purfue a declarator of other legal fentence, and thereby establish the right of the faid lands hereby fettled, and also of the faid entailed estate of A, formally and legally in their person, and in the persons of the remanent heirs of entail, who are to succeed to them as above provided for; with and under the respective reservations, conditions, provisions, faculties, restrictions, and limitations, above and after mentioned, so that the faid tailzie, and also the faid original tailzie, according to the genuine intent and meaning thereof, shall stand inviolable in all time coming, in fo far as not altered, under the authority of the faid act of Parliament, notwithstanding of any law, practice, or constitution to the contrary; BUT WITH and UNDER the Ex-CEPTIONS hereto subjoined, viz. RESERVING ALways full power and faculty to me the faid A and the helrs of tailzie in the order above described, to provide our wives and husbands with fuitable jointures, and the younger children with fuitable provisions; with and under all which conditions, provisions, reservations, restrictions, limitations, exceptions, powers, faculties, and others, these presents are granted, and shall be accepted of, and no otherways; AND ALL WHICH are hereby appointed to be ENGROSSED in the INSTRUMENTS OF RESIGNATION, CHARTERS, RETOURS, INFEFTMENTS, and others to follow hereon; ACTS, INSTRUMENTS, and DOCUMENTS in the premisses to ASK and TAKE; and generally every

every other thing thereanent to do, which we could do ourselves, if personally present, or which to the office of procuratory in such cases is known to belong; promising hereby to RATI-FY and CONFIRM whatever our faid procurators shall lawfully do or cause to be done; which DISPOSITION and procuratory of refignation above written, and lands and others therein contained. We BIND AND OBLIGE US and our heirs and fucceffors respectively, to WARRANT at all hands, and against all deadly, as law will; that is, I the said A am to warrant the faid lands of with the pertinents; and we, the faid B fenior and junior, are to warrant the lands of AND IN PARTICULAR, without prejudice to the faid generality, we, the faid B fenior and junior, BIND AND OBLICE US to free and relieve the faid A and his foresaids, of all cess, ministers' stipend, feu and teind duties, road money, and other public and parish burdens due out of the said lands , at and preceding the term of of , the faid A taking the burden thereof in all time thereafter: As ALSO, we hereby, for our respective rights, Assign and DISPONE to the faid A and the other heirs of tailzie before mentioned, under the conditions, provisions, restrictions, exceptions, clauses irritant and resolutive before written, NOT ONLY the writs, evidents, rights, titles, and securities of and concerning the lands hereby disponed, BUT ALSO the rents and duties thereof, for all years and terms from

from and after the faid term of . in all time coming; WHICH ASSIGNATION WE OBLIGE us to WARRANT as to the writs and evidents, at all hands, and in regard to the rents and duties, from our own facts and deeds respectively; AND WE, the faid B senior and junior, have delivered up to the said A our titles of the said lands of : AND WE the faid A, and the faid B fenior and junior, do hereby CONSENT to the REGISTRATION hereof in the REGISTER OF TAILzies, and in the books of Council and Seffion. for publication and prefervation, and, if needful, that all legal execution may pass upon a decree to be interponed hereto in common form; and for that purpose we constitute

, our procurators, &c. In witness whereof, &c.

6. Deed of Entail, by which the Heir of Entail entails the property of certain lands, the superiority of which had previously been vested in the Grantor, under a former Entail.

KNOW ALL MEN, by these presents, I, A, Duke of B: WHEREAS the superiority of the lands and others after mentioned does already belong to and make part of the entailed estate and dukedom of B standing in my person, AND THAT I, after acquiring the property thereof, have resolved to consolidate the same with the said right of superiority, to remain therewith in all time coming,

coming, under the fetters and limitations of the faid entail, in so far as the same do now subsist; THEREFORE, to have given, granted, and dis-PONED, as I hereby GIVE, GRANT, and DISPONE. to and in favour of myself, and the heirs male of my body; WHOM FAILING, (here the destination in the original entail was repeated)—ALL and WHOLE the two merk land, &c.; BUT with and under the conditions, provisions, restrictions, limitations, clauses irritant and resolutive, exceptions, refervations, powers, faculties, and others following, viz .- (here the conditions of the original entail were expressed)-AND LASTLY, with and under such other and further burthens, conditions, restrictions, and irritancies, as I, by a writ under my hand, shall think fit hereafter to appoint, and which shall likewise be inserted in the whole investitures of the said lands, in the same manner as if they had been engrossed in these presents; with AND UNDER all which conditions, provisions, refervations, limitations, exceptions, powers, faculties, and others, these presents are, and shall be accepted of, and no otherways; AND all which are hereby APPOINTED to be ENGROSSED in the instruments of refignation, charters, retours, infeftments, and others to follow hereon: AND to the effect that my right of property of the faid lands may be confolidated with my right of fuperiority of the same, I hereby MAKE, CONSTI-TUTE, and ORDAIN

and each of them, my lawful,

\* F &c.

- &c.—(in common form—for consolidating the property and superiority, but under the conditions; reservations, restrictions, limitations; powers, fatculties, and others foresaid.)
- 7. DEED OF ENTAIL by a Trustee in favour of the second son of a family, and failing him and the heirs male of his body, to the younger sons of the family of the heirs male of their bodies: whom failing, to the eldest son and to his second son, and the heirs male of the body of such second son, but without any provision for keeping separate the succession to the two estates, and making the succession of this secondary estate, when it shall open to the heir in possession of the principal estate, shift to the next heir in the order of succession, containing a special burden on the estate, of certain annuities, in terms of the trust-deed under which it is executed, and reserving a power of entailing, under the trust. such further estate as the trust-funds may be able to purchase.
- I, A, fole trustee in the first place, NOMINATED and APPOINTED by B, deceased, conform to trust deed and settlement executed by him, of date, whereby he resolved,

for the preservation of his name and family, to convey his estate, heritable and moveable, to trustees; that the trustee acting for the time might purchase lands as near to the total amount of his funds as possible, and might settle and secure the

fame in favour of the heirs therein mentioned. under the usual conditions, limitations, clauses irritant and resolutive; THEREFORE he, by the said trust deed, under the burdens, reservations and conditions therein and after expressed, Assigned, DISPONED, and MADE over to and in favour of me the faid A, and to B, C, and D, and our respective assignees, as trustees, for the several ends and purposes therein mentioned, BUT under the condition, that I the faid A should have the sole power, in the first place, by myself alone, to manage and execute the faid trust without the confent of the other trustees, in the same manner as if I had been named the sole trustee: But in case of my death, non-acceptance, or that I should not fully execute the faid rrust within the space thereby limited; THEN the faid B should, in the fecond place, have the fole power to execute the fame, and so on the other two trustees; AND in case of their all failing to execute the said trust within the time thereby limited, then to and in favour of his own heir at law, and his affignees, BUT for the special ends and purposes, and under the conditions therein mentioned, ALL AND SUN-DRY lands and heritages, debts and fums of monev heritable and moveable, household furniture, lying money, and all goods and gear, of whatever denomination, heirship moveables and others included, which should pertain and belong to him at the time of his death, with all the rights, titles, and fecurities of the fame, all as thereby gene-F 2 rally rally and specially assigned and made over, together with all rents, annualrents, and penalties, that should be due and resting thereon at the time of his death, and that should fall due in all time thereafter during the existence of the trust; Bur in TRUST always, and to the ends and purposes therein and after specified, viz. To the end and intent that both his heritage and moveables thereby made over might be sold and collected, and that the acting trustee for the time should, out of the first and readiest of the said sunds, in the first place, pay all his just and lawful debts, with his sick-bed and suneral expences, &c. 2do, That he should pay certain legacies to the particular perfons therein named, amounting in the whole to

, and that at the first Whitsunday or Martinmas after the lapfe of one full half year after his death, with interest from the term of payment, and during the not payment. 3tio, THAT the faid acting trustee for the time should be bound to pay the following annuities, viz. to F, an annuity of 150l. Sterling, during all the days of her life; and to G, 50l. yearly during all the days of his life; and in the event of his furviving the faid F, an annuity of tool. after the death of the faid F; payable the faid annuities in manner, at the terms, with interest, and under the penalties, as stipulated by faid trust deed; and which two annuities the faid B declared to be a preferable burden on his said estate. Ato. THAT the faid acting trustee for the time fhould!

should be obliged to purchase lands where they could be most conveniently got, to the extent of the then free capital of the faid B's estate, or as near the value thereof as might be, including the interest that should have accrued preceding the time of purchasing (after deduction of his debts, funeral expenses, &c. legacies and gifts, and of the foresaid annuities that should have fallen due at the time, and of every necessary expense of management and execution of the truft) and to take the rights and dispositions of the said lands, and to fettle and fecure the fame under a strict entail in favour of the following feries of heirs, viz. To and in favour of D M—(here the destination)—But under the condition always, that the faid disponee and heirs of entail shall assume and constantly bear the arms of with power to conjoin therewith any other name and arms that may be found necessary, and shall also contain all other usual conditions, limitations, exceptions therefrom, powers to grant leafes, and provision to wives and younger children, clauses irritant and resolutive, and other provisions neceffary, agreeably to any draught of the faid entail that should be signed by him the said B in his lifetime, relative to his faid trust deed; BUT failing his making and figning fuch draught himfelf, then, in terms of, and agreeably to such other draught of entail as shall be approved of by the Lord Advocate of Scotland, or Dean of Faculty there,

there, for the time, in the option of the acting trustee; and which entail the said acting trustee fhall be obliged to record in the register of tailzies as thereby directed: AND it is FURTHER DE-CLARED by the faid trust, that the heir of entail in possession of the said estate for the time, and the faid estate itself so laid under entail, should be specially burdened with the payment of the foresaid two annuities to the said F and G during their lives: AND LASTLY, it is declared by the faid trust, that as it might be difficult to find lands to purchase equal in value to the principal amount of the then free capital fund, the truftee for the time should be at liberty to pay over any balance that might remain, after payment of the principal, to the disponee or heir of entail entitled to hold the estate at the time, the principal being less than 300l., that so the said trust might be completed; As the faid trust, containing power to revoke or alter, and fundry other clauses, in itself more fully bears: AND the said B having died on the , without revoking or altering the faid trust deed, AND I having accepted of the faid trust, and in the execution thereof having purchased the lands of lying, &c., and having procured myself entered with the Crown as superior, and infest therein as trustee aforesaid, conform to charter, dated , and instrument of sasine follow-, and reing thereon, dated corded

It now therefore corded . remains, that I should, in further and final execution of the faid trust, denude myself, and lay the faid lands and estate under entail, as directed by the faid trust deed; Now, therefore, WIT YE ME the faid A, as trustee foresaid, with full power, by myself alone, to manage and execute the faid trust, and as standing publicly infest as aforefaid in the faid lands and others, to have given, GRANTED, ASSIGNED, and DISPONED, as I hereby GIVE, GRANT, ASSIGN, DISPONE and MAKE OVER, heritably and irredeemably, to and in favour of the faid D M, my faid fon, and the heirs male to be procreated of his body; WHOM FAILING, to my other younger fon or fons to be procreated betwixt me and , in the order of their feniority, and to the heirs male of the bodies of such younger son or sons in their order respectively and successively; whom ALL FAILING, to AM, my eldest son, procreated betwixt me and , and to his fecond fon, and to the faid the heirs male of the body of fuch fecond fons; WHOM FAILING, to the other younger fon or fons to be procreated of the body of the faid A M, in the order of their feniority, and to the heirs male of their bodies respectively and successively; WHOM FAILING, to the eldest son of the said A M, my eldest fon, and the heirs male of his body: WHOM ALL FAILING, to the faid B and the heirs of his body; WHOM ALL FAILING, to the faid B his QWR

own nearest heirs whomsoever and their assignees. ALL AND WHOLE, &c.; with all right, &c.; BUT under the conditions, &c.: AND FURTHER, I BIND AND OBLIGE ME, as truftee forefaid, in the first place, and, failing me, the other trustees substituted to me in their order, as my fuccessors in office, TO INFEFT and SEISE the faid D M, and the heirs male of his body—(here the destination was repeated)-AND THAT by a fimple infeftment only, to be held of his Majesty and his royal successors, my immediate lawful superiors, in the same manner, and as fully and freely, in all respects, as I, as trustee foresaid, now hold, or might have held, the fame myself; BUT ALWAYS with and under the conditions, &c.; and for expeding, &c. (In the procuratory, the lands and destination was verbatim repeated. But with and under, &c. To assume the name and arms, &c. Bound to record the entailpossess under the entail. Then there was the following condition added:) AND LIKEWISE under this fpecial condition and Burden, viz. As the faid B, by the faid trust deed, DECLARED, that the faid estate, and the heir of tailzie in possession for the time, should be particularly burdened with payment of the foresaid annuity to F of 150l. Sterling during her life, and of the foresaid annuity of 50l. Sterling to the faid G also during his life, and, in the event of his surviving the said F, an additional annuity of 50l., making from thenceforth an annuity to G of 100l. Sterling, for all the days of his

his life; payable the faid respective annuities at two terms in the year, Whitfunday and Martinmas, by equal portions, under the penalties, and with annualrent, as provided by the faid trust deed before mentioned. I no therefore hereby EXPRESSLY BURDEN the faid lands of , and the faid D M, and the whole heirs of tailzie succeeding to him, and that shall be in possession of the faid lands and estate for the time, with the payment of both the faid annuities to the faid F and G all the days of their lives, and that in the precife terms as stipulated in the said trust deed; and that it shall only be lawful for the said D M. and the heirs of entail fucceeding to him, during the lives of the faid F and G, and longest liver of them two, to take simple receipts and discharges from them for these annuities as paid; and it shall not be lawful to take affignations or conveyances thereto, for preferving the same as burdens on the faid entailed estate, the faid annuities being only temporary burdens, and, when once paid, shall be totally extinguished; And it is hereby expressly declared, that any fuch conveyances to be taken contrary to this order, and in place of discharges of the annuities, shall be void and null, nor shall they in any shape affect the said entailed estate, or rents thereof, in the person of the affignee; And with and under this further provision, &c.—obligation to ingress the course of succession in all renewals of this fee, excepting only

the conditions for recording this entail, which they shall not be obliged to repeat after the same is once duly recorded, nor shall it be necessary to repeat the burden to the two annuitants after their deaths. The conditions of the entail were in the common style of such deeds, and there was added the following clause:) AND BECAUSE the faid trust funds are not totally realized, the bank stock being still unfold, I cannot as yet fix the clear balance of the faid trust funds, remaining after payment of the price of the faid lands, which must be done by a future account; so, I hereby RE-SERVE to myself, and failing me, to the other trustees succeeding to me, in their order, FULL POWER to ADD any other lands to the foresaid estate hereby entailed, which I or they may be enabled to purchase with the said balance, if there shall be as much remaining as to enable me or them to purchase more land; which additional entail, I or they, shall be entitled to make, by adding the said lands to those hereby conveyed, by any new deed of entail, or by any disposition relative hereto, which shall be held as part hereof, and shall have the effect of tying up the faid lands hereby difponed, and making them descend to the same series of heirs, subject to all the conditions, limitations, restrictions, and irritancies, and in every respect under the same strict entail that is hereby imposed on the faid lands and estate of (The other parts of the deed in common form.)

8. DEED

8. DEED of ENTAIL by a Father, in terms of an obligation come under by him in his Son's Contract of Marriage; the terms of which Contract were settled under authority of the Lord Chancellor, the lady being a ward of Chancery, empowering the Son to settle a certain jointure on his Wife, in case of her surviving him, But in case the income of the estate shall not be sufficient for that jointure, the residue to be paid from a separate estate, and to burden the entailed estate no further than the yearly rent of the estate for the term of its endurance; with power to the Son, with consent of his Wife, to sell and convey to purchasers, the price being payable to trustees, and applicable to the purchase of other lands, to be secured in a similar manner. with the estate of the grantor.

BE IT KNOWN TO ALL MEN by these presents,
That I, A, heritable proprietor of the lands, barony, teinds, and others herein after disponed,
considering that, in contemplation of the marriage of B, my only son, with C, an order was
issued from the High Court of Chancery, bearing
date the , whereby it was ordered that it should be referred to
one of the Masters of the said Court, to consider and certify, whether the said B was a proper and sit person for the said C to intermarry
with; and if the said Master should be of that
opinion,

opinion, then it was ordered that the faid B should be at liberty to lay proposals before the said Master for making a proper settlement upon the said C for her benefit, and for the benefit of such issue as she might have by the said B. AND the faid Master was to consider of such proposals, and certify the same, with his opinion thereon, to AND WHEREAS the faid Master, by the Court. his report bearing date , inter alia certified, that he had confidered of the matters referred to him in the said order; and that a state of facts, and propofal, had been laid before him, on behalf of me the faid A, father of the faid B, and by the faid B; whereby it was proposed that I, in prospect of the said intended marriage, should fettle, in manner therein and after mentioned, my lands and estate of situated in the parish of and shire , in the kingdom of Scotland, of ' whereof I was feised in fee, subject only to mortgages affecting the fame, amounting to AND THAT IN CONSIDERATION of the fum of to be paid to me the faid A, the faid estate should be settled on the said B and the issue male of the marriage; and in default thereof, on the iffue female of the marriage in succession, in strict entail, according to the law of Scotland; and in default thereof, to the faid B, his nearest heirs and subject nevertheless to an annuity of affigns, , to be fecured by an heritable bond of annuity, or such other security as should be most effectual by the law of Scotland, clear of all taxations and deductions, payable half yearly to the said C for her life; and to commence at the death of the said B. AND FURTHER, the said Master, by the said report, also certified that the sum of

should be settled in the name of trustees, in trust for the issue of the marriage; and, in default of such issue, as the said C should by will appoint. And the said Master further certified, that upon considering the state of sacts and proposal for a marriage grounded thereon, he was of opinion that the said proposed marriage between the said B and the said C would be a proper and suitable marriage for the said C, and that the proposal therein stated was a proper proposal for making a settlement on such marriage, as the said report, containing a variety of other particulars, in itself more sully bears: AND WHEREAS by an order of the said Court of Chancery, made on the it was ordered that there should

be added to the proposal, stated in the Master's said report above-mentioned, as to the settlement of the said estate, a power of sale and of purchasing other lands in Scotland or England; to be settled to the same uses; and that in ease the said estate of should be insufficient to pay the jointure of a year, provided to the said C, as aforesaid, the desiciency should be made good out of the estate of : And

it was further ordered, that with this variation the Master's said report should be confirmed: And it was further ordered, that the said Master should approve of a proper settlement, according to the proposal mentioned in his said report, with the foresaid variations, and that upon the executing of the said settlement by all proper parties, as the said Master should direct. It was further ordered, that the said B and C should be at liberty to intermarry. And whereas, by marriage articles, prepared after the English form, in pursuance of the said Master's report, and decree or order of the High Court of Chancery sollowing thereupon, as above, dated

, and entered into betwixt us the faid A, the faid B, and the faid C, and other persons therein named, it is inter alia covenanted and agreed upon, that in case the said intended marriage betwixt the faid B and C should take effect, I the said A, and the said B, or our heirs, and all other persons whomsoever claiming under us, or either of us, should, within the space of fix kalendar months next after the folemnization of the faid intended marriage, at the expense of the said B, or his heirs, by fuch good and fufficient conveyances in the law, with all proper and reasonable covenants, and with fuch forms and ceremonies as are requifite by the law of Scotland, well and effectually to fettle and convey ALL AND SIN-GULAR the faid lands of , with the pertinents

tinents thereto belonging, fituated in manner forefaid, free from all incumbrances whatfoever: And all the parties to the faid articles of marriage confented and agreed, that the faid subjects should, in the mean time, from and after the folemnization of the faid intended marriage, until fuch fettlement and conveyance as aforefaid should be executed, remain to the uses, and subject to such conditions and limitations as ought, under the faid report and order of the High Court of Chantery; to be limited, expressed, or declared: THAT is to say, to the use of the said B and his assigns. for his life, with remainder to the issue male of the faid intended marriage; and in default thereof, to the iffue female of the said intended marriage in succession, in strict entail, according to the law of Scotland, with fuch clauses and provisions as may be necessary and proper for carrying into effect these limitations, according to the law of Scotland: And in default of fuch issue, to the faid B, his nearest heirs and assigns; subject nevertheless to an annuity of ber annum, to be fecured by an heritable bond of annuity, in fuch other fecurities as may be most effectual by the law of Scotland, clear of all taxes and deductions, to be paid and payable to the faid C; for her life, by equal and half yearly payments, that is, on and the first payment thereof to be made on the first of the faid days next after the death of the faid

B; and further containing a power of fale of the faid estate of

with the confent of the faid B and C, during their joint lives, or with the confent of the faid B, in case he should survive the said C, and for laying out the money arising from such sale in the purchase of other lands and hereditaments situated in England or Scotland, to be fettled to the same uses as the said estate of and for vesting the same on security at interest; as also, all such other powers, provisions, clauses, and conditions, for the further explanation of the faid marriage articles, and for the convenience and benefit of the faid parties, as should be reafonably devised, or advised and required; as the faid marriage articles, containing a number of other clauses, conditions, provisions and stipulations, also in themselves at more length bear. AND SEEING that the foresaid marriage between the faid B and the faid C has been some time ago folemnized, AND THAT it is now proper for me, in terms of the faid marriage articles before recited, and in implement of what is incumbent on me thereby, to execute these presents in manner underwritten; Therefore wit ye me, the faid A, to have SOLD and DISPONED, as I hereby, in implement of my part of the faid marriage articles, but always with and under the burdens, provisions, conditions and declarations, and claufes prohibitory, irritant and resolutive, after expressed,

pressed, allenarly, and no otherwise, SELL, ALIENATE and DISPONE from me, my heirs and successors, to and in favour of the said B, my son, and the heirs-male of the marriage betwixt him and the said C, his spouse; whom falling, the heirs-female of the said marriage, and the heirs whomsoever of their bodies, the eldest daughter, or heir-female, excluding heirs-portioners, and succeeding without division throughout the whole course of succession; whom all falling, to the said B, his nearest heirs and assignees whomsoever, heritably and irredeemably, all and whole : In which lands

and barony, comprehending as aforesaid, with the teinds parsonage and vicarage thereof, and whole parts and pertinents thereof, I hereby BIND and OBLICE myself and my foresaids, duly and validly to infeft and feise the said B and the heirs-male of his present marriage; WHOM FAILING, the heirsfemale of his present marriage, and the heirs whomsoever of their bodies, the eldest daughter or heir-female always excluding heirs-portioners, and fucceeding without division throughout the whole course of succession; whom all failing, to the faid B his nearest heirs and assignees whomsoever, on their own proper expense; Bur ALWAYS with and under the real burdens abovementioned, and under the conditions, declarations, limitations, clauses prohibitory, irritant and resolutive, herein after expressed, allenarly, and VOL. V. no

no otherwise; and that by two several infestments and distinct manners of holding; the one
thereof to be held of me and my foresaids, in free
blench farm, for payment of a penny Scotch
money, on the ground of any part of the said
lands, at the term of Whitsunday, if asked only; and the other of the said infestments
to be held from me and my foresaids, of and
under our immediate lawful superiors of the same,
as freely as I hold or might hold the same myself, and that either by resignation or confirmation, or both, the one without prejudice to the
other: And for accomplishing the said infestment
by resignation, I hereby MAKE, CONSTITUTE and
APPOINT

, and each of them, to be my lawful and irrevocable procurators, to the effect after specified: GIVING, GRANTING and COMMITTING to them, and each of them, full power, warrant, and commission, for me, and in my name, to compear before my immediate lawful superiors of the foresaid lands and barony, teinds and barony before written, or their commissioners within named, having power to receive refignations, and grant new infeftments thereupon; and there, with all due humility as becomes, purely and fimply. by staff and baton, as use is, to resign and surrender, as I hereby resign, surrender, and fimpliciter UPGIVE, OVERGIVE and DELIVER. ALL and WHOLE the forefaid lands and estate of

, comprehending the particular lands and others above enumerated, in the hands of my immediate lawful superiors thereof, or their commissioners foresaid. IN FAVOUR and for new infestment of the same, to be made and granted to the said B, and the heirs-male of his marriage with the faid C; WHOM FAILING, the heirsfemale of the faid marriage, and the heirs whomfoever of their bodies respectively, the eldest daughter or heir-female always excluding heirs-portioners throughout the whole course of succession: WHOM ALL FAILING, to the faid B his nearest heirs and aflignees whomfoever, heritably and irredeemably, in fuch due and competent form as effeirs: But ALWAYS with and under the provisions, declarations, conditions, limitations and clauses prohibitory, irritant and resolutive after written, viz. WITH and UNDER the condition always, as it is hereby expressly provided and declared, that the faid B, and the whole heirs hereby called to the fuccession of the said lands. teinds and others, shall be BOUND and OBLIGED. upon the fuccession opening to them respectively, in virtue hereof, to assume, use and bear the surname of A, and the arms and defignation of A of A, as their own proper furname, arms and defignation: As ALSO, with and under these conditions and provisions always, that it shall not be lawful, nor in the power of the faid B and the heirs of tailzie above-mentioned, or any of them,

to alter, innovate, or change the order of fuccellion above established, or to do any act or deed, directly or indirectly, which may import any alteration, innovation, or change thereof, or whereby this present tailzie may be altered, innovated, changed, or extended, in any manner AND FURTHER, that it shall not be lawful, nor in the power of the faid B, or of the heirs of tailzie above specified, or any of them, to sell, ALIENATE, DISPONE, WADSET, OF IMPIGNORATE the faid lands, teinds and others forefaid, or any part or portion thereof, nor to contract or TAKE ON DEBTS of any kind thereupon, NOR to GRANT INFEFTMENT of ANNUALRENT furth thereof, or any other infeftment thereupon, orany other right or fecurity whatfoever, either redeemable or irredeemable, of the faid lands, teinds and others foresaid, or of any part thereof, NOR TO GRANT TACKS thereof, to endure for a longer space than twenty-one years, these tacks being always to be granted without diminution of the rental, except when a fufficient tenant cannot be had at the former rent, in which case it shall be lawful to fet the same at the greatest rent that can be had for the time, the same being always done by public roup, without collusion; nor to contract debt. or do any other act or deed, onerous or gratuitous. civil or criminal, whereby the faid lands, teinds and others, hereby disponed, or any part thereof, may be anywife burdened, incumbered, adjudged; affected.

affected, or evicted, or become caduciary, escheat, forfeited, or conficated in any way; NOR shall the faid lands, barony, teinds, and others foresaid, or any part thereof, be subject or liable for any debt or deed, civil or criminal, whatever, anywife due, contracted, or done by the said B or any of the heirs of entail, hereby called, before or after their fuccession, in virtue of these presents; BUT fuch debt, deed, or crime, shall allenarly irritate and make void the contractor, doer, or committer, his or her right, but nowise burden, affect, or forfeit the faid lands and estate, to the prejudice of the next heir of tailzie, who shall have right (though descended of the contravener's body), immediately on the faid contravention, to succeed thereto, conform to the irritancy after-mentioned: AND THAT it shall not be lawful to the said B or any of the heirs of tailzie, to fuffer the duties of non-entry or relief, or the feu, blench, or teind duties, or other public burdens whatever, payable for the faid lands, barony, teinds, and others foresaid, to run on unpaid, so as to be the ground of adjudications against the said subjects; and if any apprizing, adjudication, or other diligence shall be led or deduced for any of the faid burdens, duties or casualties, the said B or the heir of entail who shall possess for the time, shall be bound and obliged to purge and redeem the faid adjudications or other diligence, four years at least before the expiry of the legal thereof, under the pain of G .3 forfeiting

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forfeiting his or her right to the faid lands, barony, teinds, and others; which shall, in that ewent, fall to the person next in the order of succesfion for the time, in virtue of these presents, and who shall be bound and obliged to purge and redeem the same within six months after his or her fuccession, or otherwise shall in like manner forfeit their right to the next heir of entail, under the fame condition to purge and redeem as aforefaid; To which provision, as to purging and redeeming, the whole heirs and members of tailzie, successively after others, are to be subject throughout the whole course of succession, until the said tailzied estate shall be completely freed and disencumbered of the faid burdens, duties, and cafualties, and diligence of every kind had for payment or fecurity of the same; AND MOREOVER, with and under this declaration, as it is hereby expressly provided and declared, that the faid B and the heirs of tailzie foresaid, shall possess the said lands, teinds, and others above disponed, under this present tailzie, and infeftments, rights, and conveyances, to follow hereupon, and by no other right or title whatfoever; and that the faid B and the faid heirs of tailzie shall be obliged to obtain themfelves timeously entered, infeft and seised, in the faid lands, barony, teinds, and others forefaid, and shall not lye out unentered above the space of one year; and that the faid B and the heirs of tailzie above specified shall insert and ingross the whole

whole order and course of succession, and conditions, provisions and declarations, and clauses prohibitory, irritant, and resolutive, contained in this present entail, in the procuratories, fignatures, precepts of fasine, charters and instruments of fafine, and other rights, titles and conveyances, of the faid entailed estate, as required by the act of Parliament. And it is hereby expressly PROVID-ED and DECLARED, that in case the said B and the heirs of tailzie foresaid, or any of them, shall act in the contrary, or shall neglect to implement or fulfil the conditions, provisions and declarations, or shall contravene the restrictions and limitations before and after specified, or any of them, in any manner of way, THEN all and every fuch acts and deeds, with all that has followed or may follow thereupon, shall not only be void and null, and have no force, strength, or effect, in the fame manner as if the faid acts or deeds had not been done, acted, or committed; BUT ALSO, the perfon neglecting to implement and fulfil the faid conditions, provisions and declarations, or contravening the said restrictions and limitations, shall ipso facto, for him or herself only, forfeit all right and title whatever to the faid entailed estate, and the fame shall thereupon devolve and belong to the next heir in the order of succession, who should fucceed thereto, as if the faid persons were naturally dead, although the person succeeding should be descended of the contravener's body, and to whom

it shall be lawful to obtain the right and possession of the premisses vested in them by every proper method known in law, without respect to any. change made by the person contravening, and without any burden or any act of omission or commission, or any other act or deed of the contravener, which may import a contravention of the faid clauses irritant, or any of them; and the perfon fucceeding upon a contravention, and in consequence of a forfeiture, as aforesaid, is to be subject and liable to the same conditions, provisions, declarations, clauses prohibitory, irritant, and resolutive, herein specified, to which the said B and the heirs of tailzie herein called are subject in the ordinary course of succession. And further. in regard it is provided that the contravener shall only forfeit and amit his or her right to the faid entailed estate, but that the descendants of his or her body are noways, by the contravention, to be cut off from their right of succession; THEREFORE it is hereby PROVIDED, that in case of the existence of a nearer heir, after the said entailed estate fhall have been vested in a remoter heir, then the right of the remoter heir shall cease and devolve on fuch nearer heir, and the deeds of the remoter heir shall be void and null, unless in so far as they may have been required in the ordinary administration of the estate; and the remoter heir shall be bound to denude in favour of the nearer heir. on his or her existence, under the conditions, provifions,

sions, and whole irritancies of this entail; RESERV-ING ALWAYS to the remoter heir the rents of the entailed estate, until the terms of Whitsunday or Martinmas following the birth of the faid nearer heir, after deduction of public burdens and interest of provisions with which the estate may for the time be burdened; and the nearer heir shall be entitled to obtain the right and possession of the premises vested in him or her by adjudication, or other method competent in law: But Provid-ING ALWAYS, as it is hereby expressly PROVIDED and DECLARED, that notwithstanding of the before written conditions and limitations, it shall be lawful to and in the power of the faid B, who is hereby authorised and required, immediately after the execution of these presents, in terms of the stipulations contained in the foresaid marriage articles, to make, grant, subscribe, and deliver to the faid C his spouse, a valid, formal, and effectual heritable bond of annuity over the whole forefaid lands, barony, teinds and others above written, for the fum of , payable after the death of the faid B, in case she shall survive him; and that at two terms in the year, by equal portions; beginning the first term's payment of the faid annuity or jointure upon the next immediately following the decease of the said B, and the next term or half yearly payment at the following, and fo forth, half yearly

vearly thereafter, at the foresaid respective terms of payment, during the lifetime of the faid C, with a fifth part more of each of the faid half yearly payments of liquidate penalty, in case of failure in the punctual payment thereof, and interest of each respective half yearly payment, from the time the same becomes due, and thereafter, during the not payment thereof: And Declaring, that as it is covenanted by the faid marriage articles, that in the event of there being any deficiency in the annual amount or produce of the rents and duties of the estate, so that the full jointure of cannot be made good therefrom to the faid C, in terms of the bond of annuity to be granted to her, then she is to be entitled to demand fuch deficiency from the estate , fo that in all events she may of be fecured in the full jointure or annuity of provided for her by the faid articles of marriage; THEREFORE it is hereby PROVIDED and DECLARED, that the faid C shall not permit the faid annuity or jointure of Sterling. payable out of the faid lands, barony, and others, hereby disponed, to remain unsatisfied and unpaid, but shall be bound and obliged to use all proper means for recovering payment thereof as the fame falls due; fo that the deficiency, if any, for which the said C is to have recourse against the faid English estate of may be regularly fixed and ascertained; BUT DECLARING, that

that the faid C, or her representatives after her death, shall not be entitled to affect the fee and property of the faid tailzied estate by any diligence for more than the amount of one half year's annuity; AND ALSO DECLARING, that the above stipulations and provisions shall be verbatim engroffed in the faid heritable bond of annuity to be granted to the faid C; and the faid heirs of tailzie shall be bound and obliged to satisfy and pay the faid annuity or jointure, as far as the rents of the premisses will go, yearly and termly, as the same falls due, and thereby free and disburden the faid lands, barony, teinds, and others forefaid: AND MOREOVER, it is hereby expressly PROVIDED and DECLARED, that notwithstanding the before written conditions, provisions, and declarations, and clauses prohibitory, irritant and resolutive, it shall be lawful to and in the power of the faid B, with confent of the faid C his spouse, during her life, and, after her death, it shall be lawful to the said B by himself, TO SELL the lands, teinds, and others, hereby conveyed, provided it be done by public roup to the highest bidder, on previous advertisement, weekly, for at least two months, in such of the Edinburgh papers as may be thought best; AND, for that end, to enter into articles of roup, make, grant, subscribe, and deliver valid and effectual absolute dispositions to the purchaser or purchasers, and free of the restrictions and limitations herein expressed, which,

which, in that event, are declared to be at an end. and which disposition or dispositions shall contain procuratories of refignation, precepts of fafine, assignation to rents and title deeds, clauses of warrandice, and all clauses necessary for giving a full, absolute, complete, and unlimited right to the purchaser or purchasers, as fully and freely in all respects, as I could have done before granting this entail; PROVIDING ALWAYS, that the faid B shall have no title to uplift or discharge the price of the subjects so to be sold, in whole or in part, but that the same shall be payable only to E, F, and G, being the trustees named and appointed in the faid marriage articles, and to the furvivors or furvivor of them; AND DECLARING, that the purchasers or purchaser shall be no ways concerned with the application of the price or prices to be paid by them, BUT SHALL be fully and effectually EXONERED thereof by the fimple discharge of the said trustees or trustee, or any person duly authorised by them or him to receive the fame; BUT PROVIDING always, as it is hereby expressly provided and declared, that upon the fale of the faid entailed estate, and the price thereof being paid to the faid trustees, they or he shall thereupon be BOUND AND OBLIGED to apply the faid price or prices, so to be received by them or him, in the purchase of other lands situated either in England or Scotland, as the faid B and the faid C during her life, or the faid B alone after

after her death, shall determine; and to take the rights or conveyances thereof in favour of the fame feries of heirs as are herein pointed out, and subject to the like conditions, provisions, restrictions, limitations, clauses prohibitory, irritant and refolutive, as are herein specially engrossed, allenarly, and no otherways; IT being ALWAYS UN-DERSTOOD, that, until a purchase of land takes place, the interest of the price shall belong to the person or persons who would have been entitled to the rents of the entailed estate, had no fale taken place; AND ALSO, notwithstanding the reftrictions and limitations above expressed, it is hereby PROVIDED and DECLARED, that it shall be lawful to, and in the power of the heirs of tailzie above mentioned, to grant liferent provifions, by way of infeftment, to their wives and husbands, payable out of the said entailed estate, in place of the terce and courtefy from which they are hereby excluded, the fame always not exceeding the fum of Sterling yearly: BUT DECLARING, that wherever two liferents shall exist at one and the same time upon the said tailzied estate, the second liferent provision, during the continuance of the first, shall not exceed the , and on the falling of the fum of first, it may then be declared to increase to the ; AND IT IS ALSO PROVIDED and DECLARED, that it shall be lawful to the said heir of entail to grant portions or provisions forth

of the faid lands and estate to their younger children, the same not exceeding four years' free rent of the same; WITH THIS PROVISION ALWAYS, that after the faid faculty in favour of the heirs of tailzie, of binding the faid tailzied lands with provisions for younger children, shall have been exercised, it shall not be lawful to, nor in the power of the heirs of tailzie above mentioned, to burden the faid tailzied lands with new provisions, until the former provisions be fatisfied and paid, in whole or in part; and that, in case of the partial. payment, new provisions may be granted; but to this extent only, that both old and new provisions existing at one and the same time, shall not exceed the foresaid four years' free rents of the said entailedestate: AND WHICH PROVISIONS to younger children are and shall be so qualified, as that the fame shall never burden the faid entailed estate further than for the principal fum alone: the interests and penalties corresponding thereto, affecting the persons of the heirs of entail only, or the current year's rent of the entailed estate, but shall in noways burden the fee or property thereof; AND THE faid heirs of entail shall be BOUND to fatisfy and pay the interest of the faid provisions, and thereby effectually free and difburden the faid tailzied estate; and the bonds of provision which are hereby allowed to be granted shall be void and null, unless they contain the foresaid conditions and qualities: And if any adjudication

judication shall be led against the said estate for payment of any of the faid provisions hereby permitted to be granted by the faid heir of tailzie to wives, husbands, or younger children; then, and in that case, it is provided and declared, that the heir of tailzie in possession for the time, shall be bound and obliged to purge and redeem the faid. adjudication or other diligence, four years at least before the expiry of the legal, or otherwise to forfeit his or her right to and in favour of the next heir of tailzie, who shall, in like manner, be obliged to purge and redeem the faid adjudications, and other diligence, within fix months after his or her succession, under the like pain of forfeiture; and to which obligation, in relation to purging and redeeming, the whole heirs and members of tailzie fuccessively after others are to: be subject through the whole course of succession, until the faid entailed estate shall be completely freed and difincumbered of the faid debts and diligence; WITH AND UNDER ALL WHICH BURDENS. conditions, provisions, and declarations, and clauses prohibitory, irritant and resolutive, above mentioned, these presents are made and granted, and no otherwise: ACTS, INSTRUMENTS and DOCU-MENTS, &c. in common form. (Clause of warrandice at all hands, and against all deadly; assignation to the rents and title-deeds; warrandice thereof; obligation to relieve the disponee from feu-duties and public burdens.) AND I HEREBY OBLIGE the faid B.

and the heir of tailzie above mentioned, to obtain this principal disposition and tailzie recorded, at their own expense, in the register of tailzies, immediately after the execution of these presents: And I hereby grant full power, warrant and commission, to

PROCURATORS, to produce this entail before the Lords of Council and Session judicially, and obtain the same recorded in the register of tailzies, and to cause expede charters and insestments thereon, in terms of the acts of Parliament thereanent; consenting to the registration, for preservation and necessary execution. (Precept of Sasine.)

9. Deed of Entail of the Estate of a Nobleman executed by Trustees, excluding idiots from the succession, and entitling the next in order to pass them by; prohibition to assign or lease out the rents or mansion-house, containing an allocation of a certain portion of the rents annually, over and above payment of the annuities and interests of provisions then in existence, at the sight of those interested therein, or of the future heirs of entail, for payment of the provisions to widows and children, and which allocation, during the minority of an heir, shall be applied for provisions to his brothers or sisters. The provisions to widows and children given whether the power be exercised or not by the husband

husband or father. The provisions vesting in the children only on majority or marriage, unless by the act of the curators of the minor for education or fitting him out; giving an annuity to such heirs as shall, from incapacity, be excluded from the succession; and provisions to the wives, husbands, and children of such heirs; provisions made for the younger children of a person who never was in possession, but whose son has succeeded as heir to the estate; provision for the restoration of an heir on the removal of the incapacity, and in case of the existence of a nearer heir, &c.

Know all men, by these presents, that we. A and B, considering that the deceased C, Earl of D, by his trust-disposition, dated recorded in the books of Council and Session. , DISPONED to and in favour of us, the faid A and B, and of certain other persons therein named, and fuch of them as should survive him, and accept within fix months after his death, and to the furvivors or furvivor of those who should accept, as trustees, for the uses, ends and purposes therein mentioned, and to the affignees of the acting trustees or trustee, heritably and irredeemably, his lands and estate of lying in the parish of , and shire , as therein particularly mentioned, and all other heritable estate which should VOL. V. belong

belong to him at his death; of which trustees (all of whom accepted and acted under the forefaid trust disposition) we the said A and B are now the only furvivors: THAT by the faid trustdeed, the trustees are directed, as soon as the affairs of the family will admit of it, to denude themselves of the foresaid estate to and in favour of E, now Earl of D, and the heirs therein and after mentioned, and that in the form of a strict entail, according to the law and custom of Scotland: That fince the trust took effect, the said B purchased for behoof of the trustees, the lands and estate of and paid the price thereof out of the funds of the trust: AND THAT the faid E. now Earl of D. having purchased the lands of from he disponed the same to the trustees as a proper addition to the other estate, burdened always with the price and interest thereof; the property whereof has been confolidated and united with the fuperiority thereof in the person of the said trustees: AND THAT, besides the lands and others above mentioned, they have titles in their persons to feveral parcels of lands which belonged to , and which fell under the general conveyances by the late Earl to the faid trustees; AND the said trustees stand heritably infeft and feifed in the foresaid estates conveyed by the faid trust-disposition, and purchased under the trust as aforesaid, in virtue of a charter under the

the great feal, and of the instrument of sasine following thereon: AND WHEREAS, fince the faid trust took effect, the revenues and income of the faid estates have been applied in discharging the expense of management, the payment of the principal fums due by the late Earl at his death. with interest on these debts, and the provisions fettled upon the younger children, and a fuitable annual income to the prefent Earl, with other payments prescribed by the trust-deed; AND the affairs of the family being now in such a state that we deem it incumbent on us to carry into complete effect the purpose and intention of the late Earl of D: THEREFORE, we do hereby, with and under the burdens, provisions, restrictions, clauses irritant and resolutive, herein after contained. BIND and OBLIGE ourselves duly and sufficiently to infeft and seise the said E, Earl of D, and the heirs-male of his body; WHOM FAIL-ING, the other heirs and substitutes particularly after mentioned, in ALL and WHOLE the lands. lordship, earldom, and others herein after particularly enumerated, TO BE HELD of our respective immediate superiors thereof, in the same manner as we hold or may hold the fame ourselves: AND, for that purpose, we hereby constitute and APPOINT

and each of them, our procurators, to the effect following, hereby empowering them, and each of them, jointly and feverally, to ap-H 2 pear

pear before our respective immediate superiors of the faid lands, lordship, earldom, and others, or their commissioners having power to receive refignations, and grant new infeftments thereof, and there, by staff and baton, as use is, to resign and furrender, as we hereby refign, furrender, upgive, overgive and deliver, ALL and WHOLE-(here the lands were described)—together with all right, title and interest whatever, of and concerning the lands, earldom, lordship, and others before mentioned, anywise competent to us under the forefaid disposition, in the hands of our faid respective immediate lawful superiors thereof, or their commissioners foresaid. IN FAVOUR and for new infeftments of the fame, to be made, given and granted to the faid E, Earl of D, and the heirsmale of his body; whom failing, to the honourable F, second fon of the said late Earl, and the heirs-male of his body; whom failing, to the daughters of the faid Earl of D in the order of their feniority, and the heirs-male of their bodies respectively; whom failing, to the daughters of the faid F in the order of their seniority, and the heirs-male of their bodies respectively; whom FAILING, to the heirs whomsoever of the body of the faid E, Earl of D; whom failing, to the heirs whomsoever of the body of the said F; WHOM FAILING, to Lady G, now the only furviving daughter of the faid C, Earl of D, and the heirs-male of her body; whom failing, to the daughters

daughters of the faid Lady G, in the order of their feniority, and the heirs-male of their bodies refpectively; WHOM FAILING, to the heirs whomfoever of the body of the faid Lady G; whom FAILING, to the heirs whomsoever of the body of H, great-grandfather of the faid C, late Earl of D; WHOM FAILING, to the heirs whomsoever succeeding to the dignity of the Earl of D: WHOM ALL FAILING, to the nearest heirs whomsoever of the faid C, late Earl of D, and their affignees, the eldest daughter or female heir always excluding the rest, or heirs-portioners, through the whole course of the succession; EXCLUDING always from the fuccession of the faid lands, lordship, earldom and others, all idiots, or perfons in a state of incapacity, all persons attainted of high treason or felony, and any person who may in law be incapable of holding property, and that while the faid incapacities remain, and until they shall be removed in due course of law, heritably and irredeemably, in due and competent form; BUT ALways with and under the foresaid exclusions, and the restrictions, conditions, provisions, appointments, prohibitions, declarations, and clauses irritant and resolutive herein after contained, and which are hereby appointed to be inferted verbatim in the infefrments to follow hereon, and in all the fucceeding investitures, rights and conveyances of the faid lands, in the person of any of the heirs of tailzie, or by which the tailzied estate H 3 fhall

fhall at any time be bruiked or enjoyed by them; THAT IS TO SAY, PROVIDED, and it is hereby AP-POINTED and ORDAINED, that wherever the estate, according to the above course of succession, would devolve upon an idiot, or person attainted of high treason or felony, or of a person who in law may be rendered incapable to hold property, the fuccession shall then, and in every such case, pass over fuch persons, they being expressly excluded from fucceeding, as herein before provided for, and shall devolve on the next heir in the order of the tailzie, after the person or persons so to be excluded, and who would have succeeded, had the excluded persons not been in existence; AND THAT fuch next heir of tailzie shall be the person entitled to succeed, and to make up titles to, and take up the tailzied estate as heir of tailzie, in virtue of this fettlement; any thing herein contained to the contrary notwithstanding: AND in case the incapacity of any of the persons called to the fuccession, from one or other of the causes above expressed, shall not have been ascertained by a regular process at law, before the faid succesfion shall have been opened to such heir or heirs, the next heir entitled to take up the succession in manner foresaid, or his tutors or curators, if he be under age, or his administrator in law, are hereby authorifed to bring the necessary actions for ascertaining the faid incapacities, and completing his title to the faid estate, he being always

ways fubject to all the conditions, restrictions, declarations, and clauses irritant and resolutive, as if he had entered in the ordinary course of succeffion: Further provided, as it is hereby Ap-POINTED and ORDAINED, that the faid E. Earl of D, and the whole substitutes or heirs of tailzie fubstituted to him, through the whole course of fuccession, after their succeeding to the said tailzied estate, shall retain or assume the name of D. and the same armorial bearing as was used by the faid C, Earl of D, the husbands of the female heirs being obliged to use the said name and arms in fo far as the law of heraldry will allow; AND PROVIDED ALWAYS, that it shall not be lawful to the faid E, Earl of D, or any of the heirs or fubilitutes in the above destination, to ALTER, INTER-RUPT, or FRUSTRATE the order and course of succession hereby established, or otherwise than is herein after prescribed and allowed; NOR to SELL, ALIENATE, REU, WADSET, or gratuitously DISPONE the lands and tailzied estate hereby conveved: Nor to burden or incumber the fame with DEBTS, nor to contract debts which may in any shape affect the same, either before or after their fuccession thereto; nor to alienate, assion, or LET in LEASE, the rents and revenues of the faid estate, except in the manner and for the purposes berein after expressed; nor to grant tacks or LEASES of any part of the estate, with diminution of the rental, unless the former rent H4 cannot

cannot be obtained, in which case the faid E, Earl of D, and the heirs hereby substituted to him, shall have liberty to let the faid lands by public roup, to the highest bidder, after having advertised them at least thrice in one of the newspapers published in Edinburgh; nor shall it be lawful for them to take any fines or graffum for the leafes granted by them, nor to let the lands for a longer period than twenty-five years or nineteen years, and the lifetime of the leffee, nor the mansion-house, garden, and parks around the fame, longer than for the lifetime of the heir in possession, nor to do any act or deed whereby the estate, or any part thereof, may be adjudged or evicted from the faid E Earl of D, or the heirs of entail substituted to him; AND in case the said E Earl of D, or any of the heirs of tailzie substituted to him, shall contravene in any of the particulars above mentioned, either by omitting or neglecting to do what, by the provisions and conditions, is required to be done, or by doing what is prohibited and debarred, it is hereby DECLARED and ORDAIN-ED, not only that the acts of contravention shall be null and void, and of no force or effect, fo far as may concern the faid lands and estate, BUT ALSO that the person contravening shall, for him or herfelf, but not for the descendants of his or her body, AMIT, LOSE, and FORFEIT the tailzied estate; and that his or her right or title thereto. and interest thereon, shall be, by the contravention.

tion, refolved, and become ipso facto void and null: and the tailzied estate shall thereupon fall, devolve, and belong to the next heir of tailzie, who. were the contravener dead, would fucceed thereto, although descended of the contravener's body: which next heir of tailzie may, upon the contravention and under the statute, pursue a declarator of irritancy of the right of the heir in possession. and serve him or herself heir to the person who died last vested and seised in the see of the estate, and did not contravene without the necesfity of representing the contravener, or may make up titles by adjudication, thereby divefting the heir in possession, and vesting him or her in the faid tailzied estate, such heir being always subject. in whatever way the title may have been completed, to the whole conditions, restrictions, declarations, and clauses irritant and resolutive, as herein contained; AND in case the said next heir shall not, within three years after the contravention, avail himself thereof, it is HEREBY DECLARED, that any one of the substitutes in the above destination may infift in fuch action to the effect of forfeiting the contravener, and transferring the estate to the said next heir, subject always to the conditions and restrictions as above expressed: AND it is hereby DECLARED, that the heir contravening is, and shall be, excluded from being the administrator, or factor, or curator of the said next heir fucceeding to him in the contravention, in fo far

far as relates to the faid tailzied estate; saving and RESERVING to the faid E Earl of D, and his heirs of tailzie substituted to him, in lieu of terce, and of the courtely of Scotland (which are hereby both expressly excluded), full power and liberty to grant liferent provisions out of the estate by infefiment to their wives or husbands, the fame not exceeding a fum equal to one-fourth part of the yearly rent of the estate for the time, all public and parochial burdens deducted, provided the same be not done by way of locality of lands, which is hereby expressly excluded, but as an heritable fecurity merely over certain rents, equal to the value of the annuity, restricted in manner. foresaid, and with this quality and condition, that the faid annuity and provision shall not become the ground of diligence, real or personal, against the heir of tailzie, or against the tailzied estate, excepting in the form of an action of mails and duties, for recovering the rents specially allocated, for fecuring the faid annuity or provision from the tenants and possessors liable for the said rents: As ALSO, SAVING 2nd RESERVING full power to the said E Earl of D, and to the heirs of tailzie hereby fubilituted to him, to give provisions to any other child or children he or they may have, befides the heir who is to fucceed, by granting to fuch younger child or children, annuities one or more, the whole not exceeding a fum answering to five per cent. of a capital equal to the amount

of four years free rent of the estate at the time. but subject to this restriction always, that if there be only one younger child at the time of the provisions becoming due, the same shall be restricted to an annuity answering to five per cent. of a capital equal to one year and a half free rent of the estate; or if two younger children, to an annuity answering to five per cent, of a capital equal to three years free rent; in security of which annuities, a specific allocation of so much of the rents of the estate as will answer the same. in the different events above provided for, may be granted in the same way as for answering the annuity or provisions for the widows or husbands of the heirs of entail, as above provided for, and under the condition thereto annexed; REDEEMABLE ALWAYS the faid annuities in favour of the younger children by the heir in possession at any time, making payment to the persons entitled thereto, or to their assignees, of the sum of rool. Sterling for every 91. of annuity, which shall be and is hereby appointed as a full fatisfaction and extinction of the annuity; Providing that if the faid feuduty and power of making provisions for wives or husbands, or the younger children of the heirs. shall have been once exercised, and shall again be exercifed by a fucceeding heir of entail during the existence of the former provisions; then, during the existence of the first provisions, the second provisions of the same kind shall be restricted to one half only of what they might have been, had the first provisions been extinguished; and which second provisions so restricted by the existence of first provisions, shall proportionally increase as the former provisions fall, by the death of the first annuitants, whether husbands, widows, or children, until the fecond provisions, by a total cessation of the burden of the first, shall come to take their full effect, according to the grant and constitution thereof; AND IN LIKE MANNER, if there shall be a third exercise of the faculty, it shall be with and under the like conditions as aforesaid, that the provisions shall, during the subsistence of the prior provisions, take effect for one fourth only of the whole, and so on in the fame ratio, in case of subsequent exercises of the faculty during the existence of the former ones; but, in all cases, the subsequent provisions shall grow and increase in their order by additions from the falling in or extinction of the prior provisions, in manner forefaid: AND it is hereby DECLARED, APPOINTED and ORDAINED, that the heir of tailzie in possession shall each year apply a sum equal to one fourth part of the free rents of the estate, after deducting the parochial and public burthens, and the subsisting annuities in favour of wives, husbands and children, in redeeming the annuities or annualrents granted or due by way of provisions to children, when the provisions have become effectual, in such a manner that those interested

rested therein may have a title to receive the redemption money; or, when that is not the case, in laying it out at the fight of any two of the heirs of tailzie in being, who are of age, or of the hufbands of any two of them who are married, or under the authority and inspection of the Court of Session, as a fund for that purpose, upon securities taken payable to those who have interest in the provisions, in such a manner that the rights thereto may operate and take effect, according to the contingencies to which the same are subject; and if the heir of tailzie in possession thall, at any time for the space of two years together, fail to make fuch application of the rents aforefaid, it shall be competent to any one of the children, or any heir of entail, to bring an action against the heir in possession, concluding that the rents of the estate, after allowance of what may be deemed necessary for the aliment of the said heir, and not less than one fourth of the said rents. shall be sequestrated and set apart, in the first place. for replacing that part of the rents which should have been applied in redemption of the annuities in time past, in manner above prescribed; and fecondly, as a fund to be applied annually in redemption of the annuities that may then subsist, until the same shall be completely redeemed, such payments being made to the children respectively pari passu in a regular course of payment, according to the order and priority of the provisions, the one

one first constituted being always first redeemed, and fo on in progression ay and until the whole fublishing provisions are fatisfied. And it is fur-THER APPOINTED and ORDAINED, that whenever the fuccession shall devolve upon a minor heir of tailzie, and it shall so happen that, by the application of one fourth of the free rents as aforesaid. the subsisting provisions may be paid off within the period of the heir's minority; then the minor heir is hereby obliged, from the period at which the faid provisions shall be paid off, to the period of his or her arrival at majority, to lay out, annually, a fum equal to one fourth part of the rents of the estate as aforesaid; the said sums to be divided equally betwixt the brothers and fifters of the heir; and which appropriation, the faid younger children, or those acting for them, shall be at liberty to enforce in manner above written; And it is further DECLARED, that if the faid E, Earl of D, or any heirs of tailzie in possession, shall happen to die, without having exercifed the power and faculty hereby conferred, of providing for wives, husbands, or children; THEN, and in fuch case, and so often as the same shall occur on the death of an heir of entail in possession, the whole provisions hereby allowed to be made, whether in favour of wives, or husbands, or children, shall, ipso jure, take place and be effectual to and in fayour of the wife, and husband, and children, who might, by an exercise of the faculty, have had

the provisions thereby allowed to be made, sun-TECT ALWAYS to the conditions and limitations and nexed to and affecting the exercise of the faculty; AND the remaining heirs of entail who shall enjoy and possess the tailzied estate, shall be, and they are hereby BOUND and OBLIGED to make. execute and grant, all fuch proper and necessary deeds, for establishing and making effectual, in a legal and habile manner, the faid provisions out of the tailzied estate, as the heirs of tailzie who ought to have exercised the faculty, might or could have made or granted the same; AND it is hereby DECLARED, APPOINTED, and ORDAINED. that whether provisions have been made for children by a deed executed by an heir of entail in possession, or have taken place ipso jure by virtue of the preceding clauses, none of them shall have power to dispose of or burden their shares or interest therein, until they attain majority or be married; with this exception, that the tutors of the children, or the minors, with confent of their curators, may, for the purposes of education, or fetting out the minor in the world, dispose of or burden the whole or any part of the faid provisions, and to that extent the faid provisions shall be held as a vested right in the children, and assignable or transferable in manner foresaid, any thing herein to the contrary notwithstanding; And it is further DECLARED, that in case of a child or children dying before majority or marriage, and without disposing

disposing of or burdening his or her share, in manner foresaid, the same shall divide equally amongst the surviving younger children. THER, it is hereby appointed and ordained, that in case of a devolution of the succession, upon the exclusion of a person in a state of natural incapacity, the heir of tailzie succeeding, and all subsequent heirs of tailzie in possession, SHALL, and they are hereby BOUND to make a reasonable provision out of the rents of the tailzied estate, for the aliment of the excluded person, suitable to his or her actual circumstances, the amount thereof to be fixed by the decree, in virtue of which he or she shall be excluded, which provision is hereby DECLARED to be a burden on the estate, of the fame kind with a provision to a husband or wife of an heir of entail, and as such to limit or restrain, while it subsists, the effect of any future provisions to wives or husbands, and to be preferable thereto in respect to payment; AND it is hereby APPOINTED and ORDAINED, that if, by any of the forefaid exclusions, or by the contravention of an heir of tailzie in possession, the succession shall devolve upon a more remote heir of tailzie. THEN, and in any of these cases, the wife, husband, and children of the person excluded or contravening, other than an heir entitled upon the devolution to fucceed to the tailzied estate, such wife, husband, and children, being themselves under no legal incapacities or disability to take and

and enjoy, shall, immediately on the devolution taking place, be entitled to provisions out of the tailzied estate, to the same extent, and in the same manner, as if the excluded or contravening perfon had been an heir of tailzie dying in possession; AND the next heir fo fucceeding by the devolution, and all fucceeding heirs of tailzie, shall be, and they are hereby BOUND and OBLIGED to make and execute all proper and necessary deeds for rendering these provisions effectual, but subject to the whole qualities, conditions, and restrictions affecting the provisions to be made for wives, husbands, or children, above written; AND in LIKE MANNER it is hereby APPOINTED and OR-DAINED, that if the failzied estate shall at any time devolve on an heir of entail, whose parent was not in possession of the estate at the time of his or her death, the wife or husband and younger children of fuch person, the children not having arrived at majority, and being unmarried, shall, on such devolution of the estate, be entitled to provisions out of the tailzied estate, to the same extent, and in the same manner, as if they had been the wife or husband and children of an heir of entail dying in possession, such provisions being always subject to the qualities, conditions, and restrictions above expressed: And it is hereby further APPOINTED and ORDAINED, that if the incapacities, disabilities, or causes, on account of which any heir of entail is excluded from the possession, shall be removed,

or cease, after the next heir of tailzie has actually fucceeded, THEN, and in that case, the persons who were excluded shall be restored and placed in the fame situation which they held or might have held in the tailzie and fuccession, had they never been excluded, the right of the heir of tailzie who filled his or her place being from thenceforth at an end; As Also, if, after the succession to the estate shall have opened to an heir of entail, or nearer heir of tailzie shall come into existence. then the heir who may have fucceeded shall be excluded by the faid nearer existing heir of tailzie. who shall be entitled to succeed; AND in either of the above cases, the heir of tailzie in possession shall be BOUND and OBLIGED to denude and divest himself or herself of the tailzied estate, to and in favour of the person restored as aforesaid, or to the nearer heir who shall respectively have access and be enabled to establish a right and title to the said tailzied estate in their own persons, in the same manner and with the same effect as in a contravention, and on the devolution following thereupon; without prejudice always to the right of the heir of tailzie, whose title is voided in any of the ways above mentioned, to the rents of the tailzied estate, preceding the first term of Whitfunday or Martinmas immediately after the birth of the nearer heir, or after the commencement of the action by the heir formerly excluded, for recovering his right, as the case may be: And inall

all and each of these cases, the heir who has been excluded, and who is nearer in descent than the person in possession, may, and is hereby authorised to insist in an action for setting aside the right of the heir in possession, and may also thereupon ferve himself heir to the person who died last infeft, and in the fee of the entailed estate, without, however, representing the faid heir, other than as heir of entail, AND subject always to the whole exclusions, limitations, restrictions, conditions, provisions, declarations, and clauses irritant and resolutive, herein contained: AND LASTLY, PROVIDED, and it is hereby APPOINTED and ORDAINED, that all the heirs of tailzie hereby nominated and appointed, and effectually entitled to succeed, and to or upon whom the tailzied estate shall descend or devolve, in the course of succession, in virtue hereof, shall make up their titles to the tailzied estate, and shall possess the same only as heirs of tailzie, under and by virtue of this settlement and tailzie, and conformably thereto, and not in any other manner, or by any other right or title whatfoever, contrary thereto and inconfistent therewith; AND THAT they shall INSERT in every special service, retour, charter, precept of clare, infeftment, right, conveyance, and transmission, whereby they bruik, enjoy, and possess the tailzied estate, the whole exclusions, limitations, restrictions, conditions, provisions, appointments and prohibitions, declarations, and clauses irritant and resolutive.

resolutive, herein contained, the omission whereof, or the attempting to make up or to possess the tailzied estate by any other title, shall, in terms of the particular provision of the statute to that effect made, import a contravention of the tailzie, and of the irritant and resolutive clauses thereof. against the person so contravening, but not against the heirs of his or her body, whereby the tailzied estate shall ipso jure accrue and devolve on the next heir of tailzie, although descended of the contravener's body; AND all titles made up contrary to the tailzie shall be, and the same are hereby declared to be, VOID and NULL; ACTS, INSTRU-MENTS, &c. AND MOREOVER, we hereby ASSIGN and CONVEY to the faid E, Earl of D, and the heirs fubilituted to him, the whole title deeds concerning the lands and others forefaid, whole clauses thereof, with all that has or may follow thereupon, As ALSO the rents and profits of the faid lands, in fo far as not uplifted at the date hereof; AND FI-NALLY, we hereby empower

, and each of them, to obtain this present tailzie RECORDED in the particular REGISTER kept for TAILZIES, agreeably to the act of Parliament, and to complete the same by charter from our immediate superiors, and to take infestment thereon; AND, for surther security, we consent to the REGISTRATION hereof in the books of Council and Session, or of any other proper Court, therein to remain for preservation, and,

and, if necessary, that all execution may pass upon a decree to be interponed hereto in common form; and for that purpose constitute

OUR PROCURATORS, &c. In witness whereof, these presents, &c.

These different examples of the Entail, with others which must necessarily be given under the titles of Marriage Contracts and of Services, will probably be found to contain most of the conditions for which the conveyancer in ordinary practice will have occasion; and before proceeding to give an example of the Sasine on the Entail, this seems to be the proper place for showing in what manner the powers of altering or revoking the Entail are exercised.

DEED OF ALTERATION of an ENTAIL, executed in virtue of the reserved Powers held by the Grantor of the Tailzie.

KNOW ALL MEN by these presents, that I, A esq. of A, CONSIDERING that, by a deed of entail, dated , I disponed the barony of A to and in favour of A, my son, and the heirs whomsoever of his body; whom failing, to B, my daughter, and the heirs whomsoever of her body;

whom failing, to the other heirs therein particularly named; RESERVING to me full power to fell and dispone the said lands, and to contract debt thereon; As ALSO, to REVOKE the faid deed in whole or in part, and to ALTER or INNOVATE the CONDITIONS thereof, and order of succession therein prescribed, by a writing under my hand; DE-CLARING, that whatever alterations shall be made relative to the faid tailzie, either as to the order of fuccession, or as to the conditions, limitations, prohibitions, restrictions, exceptions, powers, faculties, and clauses irritant and resolutive, therein contained, shall be held as part of the said deed of tailzie, and the charters, infeftments, and other rights and fecurities to follow thereon, shall be in favour of the heirs of tailzie, according to the rank and order of fuccession, and under the conditions, limitations, prohibitions, restrictions, exceptions, powers, faculties, and clauses irritant and resolutive, to be inferted in fuch writing, to be fubfcribed by me, in the same way as if the said heirs and members of tailzie had been fo ranked: and the conditions, limitations, prohibitions, restrictions, exceptions, powers, faculties and clauses irritant and resolutive, so expressed in the said deed of entail, as the faid deed in itself more fully bears; AND I being resolved to exercise the above power, in the manner under written, have therefore REVOKED, as I hereby REVOKE that part of the substitution of heirs contained in the said deed

deed of entail, which follows the nomination of C my nephew, and the heirs male of his body, and in place thereof have NOMINATED and AP-POINTED, as I hereby nominate and appoint the persons after named to be my heirs and succesfors in my faid lands and barony of A and others particularly described in the said deed of entail, after the faid C and his heirs male, viz.—(here the new destination was inserted)—All which heirs of tailzie above mentioned, as well as the prior heirs contained in the faid deed of entail, are to possess and occupy my faid lands of others, subject to the conditions, limitations, prohibitions, restrictions, clauses irritant and resolutive, exceptions, powers, faculties and refervations, contained in the faid deed of entail: AND I AP-POINT and ORDAIN this alteration and addition to be held and received as a part of the faid deed of entail, and to be inferted and engroffed in the procuratories and instruments of refignation, charters, retours, precepts and infeftments of the lands, barony, and others before mentioned; RESERVING ALWAYS full power and liberty to me to alter and revoke these presents, in whole or in part, as fully and freely as if the same had never been granted; AS ALSO, SAVINO and RESERVING to the faid A my fon, full power and liberty to REVOKE the substitution of heirs contained in the said deed of entail, and herein before written, in so far as regards the faid D-(one of the new destination)and

and thereby to exclude him and his faid heirs from all right of succession to any part of my estate; AND I hereby DECLARE, that if this deed of NOMINATION and ALTERATION shall be found in my repositories after my death, or in the custody of any other person, unrevoked by me, the fame shall be as effectual as if it had been delivered or recorded in the register of tailzies. and a charter and infeftment expede thereon during my life; and I hereby DISPENSE with the not delivery hereof: And I do further appoint these presents to be recorded in the REGISTER of TAIL-ZIES, along with, and as part of my faid deed of entail; AND for the more security, I ALSO CON-SENT to the REGISTRATION hereof in the books of Council and Session, &c.

## DEED of REVOCATION of an Entail.

BE IT KNOWN TO ALL MEN by these presents, that I, A, considering that upon the

I executed a disposition and deed of entail of my lands of , and other lands and estates belonging to me, therein described, in favour of myself, and, after my death, in favour of B and the heirs male of his body; whom failing, to C and the heirs male of his body; whom failing, to the other heirs of tailzie and provision therein mentioned, but under certain

tain conditions, provisions, restrictions, limitations, clauses irritant and resolutive, and declarations therein contained; by which disposition and deed of entail, I referved to myself full power and liberty, by any deed or deeds to be executed by me in liege poustie, to revoke, alter, or innovate the fame, or the course of succession thereby appointed, or to alter any of the conditions, provisions, restrictions, limitations, irritancies, and declarations, powers and faculties, therein contained, in whole or in part, or to add thereto other and further. conditions, limitations, or declarations, as I should think fit; BUT declaring that no revocation or alteration of the faid entail, or burdens upon the faid entailed estate, should be inferred by implication or construction, BUT ONLY by an express writing, under my hand, recalling the faid deed of entail, or altering the fame, as the faid disposition or deed of entail, which was duly recorded in the register of tailzies, on the , and in the books of Session to which reference is hereby specially made, and which is herein held as repeated brevitatis causa, in itself more fully bears: And now seeing that, for certain good and onerous causes, I have lately executed other fettlements of my lands and estate, by which the order of fuccession appointed by the foresaid deed of entail is altered, and the conditions thereof innovated and changed; and in order

der to give effect to the faid fettlements lately executed by me, it is necessary to revoke the foresaid deed of entail in manner after mentioned: THEREFORE I have REVOKED, and do by these presents REVOKE and ANNUL the disposition and deed of entail before narrated and referred to, in the whole heads, articles, clauses, and conditions of the same, AND DECLARE the same, and all that has followed thereon, to be NULL and void to all intents and purposes, and to be of no force, strength, or effect, in the same manner as if the faid disposition and deed of entail had never been executed by me; AND I DISPENSE with the delivery of these presents, declaring that the same, though found lying in my repositories after my death, or in the custody of any person to whom I may entrust the same, shall be equally valid and effectual as if the same were delivered by me to the persons who, in virtue of the settlements lately executed by me, as aforefaid, are appointed to fucceed to my faid lands and estates; AND I con-SENT to the registration hereof in the books of Council and Session, or others competent, therein to remain for prefervation, and also in the register of tailzies, for publication; and I constitute

, MY

PROCURATORS for that purpole, &c. In wit-NESS WHEREOF, &c.

#### REGISTRATION OF THE FOREGOING DEED.

A revocation of this kind will be ordered to be recorded by the Court in the Register of Tailzies. The application may be made in this form:

Unto the Right Honourable the Lords of Council and Session,

THE PETITION OF A of , Esq.

## Humbly sheweth,

THAT on the , the petitioner executed a deed of entail, of fundry lands lying in the county of , in favour of himself and the heirs male of his body; whom failing, to the other heirs and substitutes therein mentioned, containing the usual prohibitory, irritant, and resolutive clauses; which deed was produced to your Lordships, and, under your authority, registered in the Register of Entails, on the , and in the books of Session; an extract whereof is herewith produced.

That the abovementioned entail has lately been revoked by the petitioner, by a deed of revocation, executed by him on the , also herewith produced; which deed of revocation the petitioner is desirous of having recorded in the faid Register of Tailzies.

MAT

#### 140 OBSERVATIONS ON THE PLAN FOR

May it therefore please your Lordships to interpone your authority to the said deed of revocation, and to grant warrant to the keeper of the Register of Entails, for recording the same in that register, in terms of the statute 1685.

According to Justice, &c. Signed by Counsel.

These forms will suffice. But I cannot leave this fubject without hazarding an observation that appears to me capable of leading to a confiderable improvement on the conditions of the Entail, and which I therefore beg leave to submit to the confideration of the more experienced conveyancer. It is usual in the entail to permit the heir in possession to secure a jointure to his widow of one third of the rent, and three years' rent of the estate, as a provision for the younger children; provisions which, when they take effect, must encumber an heir of entail (who is, in fact, nothing else than a liferenter), in a manner that must preclude him from fupporting the honour of the family he represents, or must inevitably fink him in For instance, suppose the estate to yield debt. a free rent of 1000l. Sterling, 330l. of this goes to the widow of the last proprietor; and his children

children draw 3000l.; which, in most entails, is ordered to be paid off within a certain period. Let us fee, then, in what fituation the heir of entail will be placed by the pressure of this burden. It feems fcarcely possible to fet apart a finking fund of more than 300l. a year for answering the children's provisions; and even this will require to operate for 15 years, before the provisions be discharged. If the widow lives fo long, or at least during her life, there will be a burden of 630l. on the estate, leaving a residue for the heir of 370l.; from which, after deducting arrears and expenses of management, he has to support an appearance befitting the heir of the family, and the proprietor of an estate of a thousand a year; a fituation certainly very inconfiftent with the object of a deed which is intended to perpetuate the name and family of the grantor, and which therefore ought to induce the conveyancer, as well as the grantor of an entail, to inquire feriously whether it be posfible to arrange the conditions in fuch a manner as to provide for the widow and children of the heir in possession, without throwing on the next heir a burden fo intolerable as that which

which feems to be the necessary result of the plan at present universally followed.

In fearching for this remedy, it certainly is matter of furprife, now that the effect of a finking fund is so well understood, and the means of accomplishing the object of it, through the medium of the national funds, so easy and certain, that it never has been brought in aid of the entail, and introduced as a method of securing a fund of provision for the widows and children of heirs of entail.

When a fum of money is annually fet apart for constituting a fund, the interest of each year's payment accumulates and bears interest; the effect of this accumulation becomes every year more apparent as the scheme advances; and in the end it increases the fund with wonderful rapidity. When, on the other hand, the annual fum is applied to extinguish a debt already contracted, we not only lose the effect of the accumulation of the interest, but the interest of the debt already existing runs against the fund, and the estate must contribute not only the principal of the debt, but all the interest that arises on that principal betwixt the period of contracting the debt and the final extinction of it.

For

For instance, let us take the case of an estate of 1000l. a year, burdened with 3000l. of provisions, and let us suppose that sool, a year is fet apart for extinguishing this debt, it is obvious, that in ten years time 3000l. will have been fet apart; but as it requires fifteen years to extinguish the debt, it is equally obvious that the heir in possession must have paid 1500l. of interest in the course of clearing the debt; but if this annual payment be constantly improved for the period of fifteen years before it be wanted, the confequence will be, that in place of producing 3000l., upwards of 7000l. will be produced: Such is the wonderful effect of the accumulation of interest, which here acts in a double ratio, from the contrary tendency of the two plans.

The establishment of a sinking fund, where the annual savings were regularly improved by purchasing stock, would therefore greatly relieve the burdens on heirs of entail, arising from the necessity of providing for the widows and children of the heirs in possession. Suppose, for instance, the saving of 7000l. Sterling to be applied to these purposes; it arises, it will be observed, from a fund which, by the plan commonly followed, is barely sufficient to

pay 3000l. to the younger children: Whereas if 3000l. be sufficient to purchase a jointure of 300l. to the widow, the effect of the accumulation will be to provide for the widow, while at the same time 4000l., in place of 3000l., is secured to the children. In this view, therefore, the heir of entail would constantly have an income of 700l. a year, while provisions were made for his widow and children; in place of being restricted, for years, (as must happen on the other plan) to the slender provision of 360l., which, with the drawbacks that must accompany it, will unavoidably throw the heir into obscurity.

But a further advantage might be reaped from this plan. As things are managed at present, an heir succeeding to an entailed estate, and burdened with provisions to the widow and children of the preceding heir, is completely incapacitated from improving the estate. Now, if we suppose the jointure to the widow to be purchased from the heir of entail, and the 3000l. to be laid out in improvements, under the control of the Judge Ordinary, those very situations which at present are the most unfavourable for improving an estate of that description, will become the

fource

fource of permanent improvements, which will enable the heir of entail to pay off the jointure, without imposing on him any very formidable burden, or one which will not be fully compensated by the increased permanent rent which the estate will be made to yield.

Were this plan to be in general approved of, there are many leffer points that would require attention. Sixteen years is confidered to be the mean period of the duration of marriages: If, therefore, an entailed estate were regularly to descend to one married pair after another, this allotment of 300l. would, in the general case, be sufficient to provide for both But the fituation of widows and children. heirs of entail is widely different; there are long minorities in the course of such a succesfion; the heir marries late in life, or dies unmarried: It is probable, therefore, that in fuch a fuccession there will be fewer widows, though younger ones, than will be found in other cases of affociations for provisions to widows; and many things would require to be confidered, before prefuming to establish such a plan. Thus, it would be necessary to ascertain, 1. The mean period of the duration of an heir's posfession; 2. The recurrence, as well as the com-VOL. V.

mon duration of minorities; 3. The chance that the heir will leave a family; 4. The number of children of which the family will generally confift; 5. The chance of leaving a widow; 6. The number of years purchase of a jointure to the widow. Were these points well ascertained, it might then be possible to calculate the burden with precision; and it is more than probable that the effect of anticipating the demand, by preparing a constant finking fund, and providing for the due improvement of it, joined to the effect of minorities, during which great additions might be made to the finking fund, would be, that a much smaller burden, laid equally over the whole heirs of entail, would produce a sum equivalent to the provisions at present made for the younger children: Or, were there appropriated to this purpose a fund equal to what is required by the ordinary conditions of the entail, then a much larger provision for younger children would be accumulated; which indeed justice, as well as the present state of society, feems to require for their proper establishment.

In forming a plan of this kind, it would be proper to allot for it a certain farm or portion

of

of the estate, in preference to a sum of money, as its produce would constantly bear the same proportion to the estate that it did at first. There might further be provisions in the plan for heightening or lowering the annual allotment, according to circumstances; which would prevent the plan from falling into disorder.

These hints will sufficiently explain the object I have in view. Whether it may appear to the conveyancer or to the proprietor engaged in adjusting the terms on which he means to limit his fuccession, of sufficient importance to induce him to adopt the measure, I shall not presume to conjecture; perhaps it may appear, when duly weighed, to have drawbacks which I have not discovered; and I should be ready to believe that some such objection did lye to it, from having met with no plan of the kind amongst the entails I have perused, were I not aware that most of our great entails were prepared at a period when the measure was less likely to occur than at prefent; and that, in the general case, one entail is framed on the standard of another, without any attempt to change or improve the conditions of the deed.

The only arrangements that approach in any K 2 degree

degree to this plan, will be found in the Entail, No. 9, and in the following condition, which I find in the entail of a noble family, and which is meant to provide for the case of the minorities that may occur. The clause is thus expressed:

' AND BECAUSE the faid deceafed Colonel F C his estate is sufficient to afford a plentiful living for the heir in possession for the time, and his family, and out of the yearly fruits and profits thereof, as to lay aside and secure as much an-' nually as may duly and competently provide the faid heir's younger children, without affecting or burdening the faid estate with the fame; to do which, to wit, to affect and bur-6 den the faid estate with provisions to younger children, otherwise than is hereafter specified, the faid F C, and the whole heirs of tailzie 4 above mentioned, or any of them, are declared 6 to have no liberty or power; THEREFORE, and 6 to the effect these younger children may be the "more furely provided, and with the greater ease 6 to the foresaid heirs, it is hereby, and by the faid disposition, specially provided, that where ' any of the heirs of failzie are of less age than 21 years complete, there shall be no more beflowed or employed yearly in the maintenance ' and education of any of them, than as aftermentioned, to wit, till the faid heir be three vears

4 years of age complete, the sum of 100l. Ster-4 ling yearly; and from thence, till his or her age 4 of seven years complete, the sum of 2001. Ster-6 ling; and from thence till his or her age of ten e years complete, the fum of 500l. Sterling; and from thence till his or her age of fourteen f years complete, the sum of 800l. Sterling; and from thence till his or her age of twentyone years complete, the fum of 1000l. Sterling: AND the whole other rents and profits of the estate shall, during the several years aforesaid, by the tutors or curators of the said heirs, be employed, laid out, and fecured, to 6 be a fund for provisions to younger children of the faid F C, or of others of the foresaid heirs 6 of tailzie whose younger children are not all, or are not fufficiently provided, or may happen ' afterwards to exist: And it shall not be in the opower of the faid heir to apply all or any part 4 of the faid fund to any other use or purpose, but to the provisions of the younger children ' allenarly, as faid is; and if it happen that at any time there shall be an overplus of the said fund, after fufficiently providing the faid younger children, as aforesaid, who at the time are extant, the faid overplus shall remain and confinue a fund for providing subsequent younger children of the faid F C, or of the forefaid heirs, and shall not be applied to any of ther use whatever: AND it is DECLARED, if K 3

any of the foresaid heirs be of twenty-one years complete, and do in the contrary hereof, it f ought to be deemed and construed to be and have all the effect and confequences of incurf ring all or any of the irritancies above fet forth; and the contravener shall thereby lose his right 5 to the lands and estate hereby disponed, and the fame shall descend to the next and subsequent heir of tailzie in their order, and by them be renewed and established in their persons, in ! like manner, and under the fame conditions and ' irritancies, as above fet forth: And it is also 5 PROVIDED and DECLARED, that if the tutors or curators of the faid heirs do not at any time e particularly observe the premises with respect to the fund for provisions for the younger children, as faid is, they may on that account be ref moved as suspected, and shall thereupon be liaf able to all the legal confequences of fuch ref moving; and it shall be competent to any of the relations of the pupil or minor respectively, to pursue the said tutor or curator as aforesaid, and thereafter ay and while other tutors or cuf rators be lawfully appointed to manage and take care of the faid funds for younger children; AND to do all and every thing that tutors or curators might lawfully have done thereanent; f and shall only, on that account, be liable pro f rata, and not in solidum, and only each for his \* actual intromissions.'

Should any one be inclined to blame me, he will recollect that the proposal I have presumed to lay before the reader, has in view the improvement of a deed which, as long as it remains an opprobrium to our law of landed property, it is the duty of every professional man to attempt to improve by every means in his power; and I should hope that all blame will be spared, since I make the proposal with every sentiment of respect and deserence for those of superior knowledge and information.

I shall, however, risk still another observation on this subject. In many situations, it would be an act of public, as well as of private benefit, to allot a certain portion of an entailed estate for planting, which it should be

K 4

the duty of the heir in possession to preserve, under a penalty. This planting should go to increase the provisions for younger children; and, when the trees are cut down, the ground should be again planted out; or, according to circumstances, another part of the estate employed in the fame way, and the furplus produce placed in the public funds, the interest to be fet apart for the purpose of providing the widows and children of the heirs of entail; either by adding to the other funds appropriated for these purposes, and so raising the provisions of the younger children, or by operating to the total or partial relief of the rents from these burdens.

In short, whatever it is the duty of a prudent father of a family to do in the management of an estate, it is the duty of the maker of an entail to prescribe and to enforce. equally the duty of the conveyancer, to bring into view fuch confiderations as ought to be well weighed and thought of by the grantor.

# SECT. II. OF THE SASINE ON THE ENTAIL.

THE instrument of sasine is, both at common law and under the statute, a necessary part of the title of the inftitute or heir of entail. In the fafine, the conditions of the deed must be inferted, not only in obedience to the act, but on this account, that, to render a burden real and effectual against creditors, it must have entered the records. The fafine is therefore a necessary step in completing the entail. In faying this, I have in view the fasine, whether it proceeds on the precept of fasine in the entail, or (where the entail is completed by a refignation) on the precept in the charter of refignation; because, to render the conditions effectual, fasine must, in one way or another, have followed on the entail. At present, I take the safine on the precept of fasine in the entail, and where it proceeds in favour of the institute, leaving the fasine in favour of heirs of entail to future confideration.

Instrument of Sasine in favour of the Institute in the Entail, No. 8. p. 91.

IN THE NAME OF GOD, AMEN. BE IT KNOWN TO ALL MEN, by this prefent public instrument, That upon the day of in the year of our Lord, and in the reign of our Sovereign Lord George the Third, by the grace of God, of the united kingdoms of Great Britain,

tain and Ireland, King, defender of the faith, the year, In presence of me notary-public, and of the witnesses subscribing, COMPEARED perfonally M, as procurator and attorney for B, whose power of procuratory was fufficiently known to me the faid notary-public, AND PASSED with us, and N, baillie in that part fpecially constituted, in virtue of the precept of sasine after inferted, to the ground of the lands after mentioned, respectively and succeffively, HAVING and HOLD-ING in his hands, a DISPOSITION and DEED OF TAILZIE, bearing date , granted by A; WHEREBY, for the causes there stated, and in implement of his part of the marriage articles therein specified, BUT ALWAYS WITH and UNDER the burdens, provisions, conditions and declarations, and claufes prohibitory, irritant and resolutive, therein and after expressed, allenarly, and no otherwise, he sold, ALIENATED and DISPONED, from him, his heirs and fuccessors, To and in FAvour of B his fon, and the heirs male of the marriage entered into betwixt B and C: whom FAILING, to the heirs female of the faid marriage, and the heirs whomfoever of their bodies respectively, the eldest daughter or heir female excluding heirs portioners, and fucceeding without division through the whole course of succession; WHOM ALL FAILING, to the faid B his nearest heirs and affignees whomsoever, heritably and irredeemably, ALL AND WHOLE—(here the lands will

be described fully as in the Entail)—BUT ALWAYS with and under the provisions, declarations, conditions, limitations, and clauses prohibitory, irritant, and resolutive, therein and after written, viz. with and under the condition ALWAYS, as it is thereby expressly PROVIDED and DECLARED, that the faid B, and the whole heirs hereby called to the fuccession of the said lands and others, shall be BOUND and OBLIGED, upon the succession opening to them respectively, in virtue of the said entail. to assume, use, and bear the surname of A. and the arms and defignation of A of A, as their own proper furname, arms, and defignation; As ALSO. with and under these conditions and provisions always, &c.—(here the whole conditions of the entail will be narrated, until you come to the words, ACTS, INSTRUMENTS, and DOCUMENTS) - WITH and UN-DER ALL WHICH BURDENS, conditions, provisions, and declarations, and clauses prohibitory, irritant, and resolutive above mentioned, the said disposition and deed of entail is expressly made and granted, and no otherways, as the fame, containing an obligation on the faid A to infeft the faid B and the heifs of entail thereby substituted to him a se vel de se, procuratory of refignation, clause of absolute warrandice, assignation to the rents and title deeds, precept of fasine above mentioned and herein after inserted, with the usual and necessary clauses of an entail, more fully bears; which disposition and deed of entail containing

containing the faid precept of fafine, the faid attorney presented to the said baillie, and defired him to proceed to the execution of the office of bailliary thereby committed to him, by giving fafine to the faid B, of the lands and others above mentioned, in terms of the above disposition and deed of entail, and precept of fasine therein contained; WHICH DESIRE, the faid baillie finding to be reasonable, he received the said disposition and deed of entail into his hands, and delivered the fame to me notary public fubscribing, to be read and published to the witnesses present; which I did accordingly; and of which precept of fasine therein contained, the tenor follows in these words:-(here the precept of sasine and testing clause, with the subscriptions of the party and witnesses, will be copied into the sasine)—AFTER READING and PUB-LISHING of which disposition and deed of entail, with the precept of fasine therein contained and above inferted, the faid baillie, in virtue thereof, and of the office of bailliary thereby committed to him, GAVE and DELIVERED heritable state and safine, actual, real, and corporal possession to the faid B, of ALL and whole the lands and others above mentioned, lying and described in manner foresaid, BUT ALWAYS with and under the burdens, provisions, conditions, and declarations, and clauses prohibitory, irritant, and resolutive above expressed, under all and each of which, this infeftment is given and received by the faid B, and not

not otherways; AND THAT by DELIVERING to the faid attorney of earth and stone of the grounds of the faid lands, respectively and successively after others, after the form and tenor of the faid difposition and deed of entail, and precept of sasine therein contained, in all points; whereupon, and upon all and fundry the premises, the said attorney asked and took instruments in the hands of me notary public subscribing. THESE THINGS WERE fo done on the grounds of the faid lands, respectively and fuccessively, betwixt the hours of of the day, month, year and of God, and the King's reign, respectively first above written, BEFORE, and in presence of O, and P, witnesses to the premisses specially called and required, and hereto with me fubscribing.

Attested by the notorial docquet, and by the subscriptions of the notary and witnesses in common form, of which there is an example Vol. I. in the sasine on the feu charter.

By the registration of this instrument in the register of salines, the conditions of the entail enter that record, without which no real burden can be created over land: This entry is besides a statutory requisite for giving effect to the entail.

# SECT. III. OF THE REGISTRATION OF THE ENTAIL.

THE registration of the entail is carefully provided for by the act; and a new register is established, in which the principal parts of the entail are directed to be engroffed; though, in practice, in place of those extracts pointed out by the statute, a complete copy of the entail is It is to this device, that the Legislature seems principally to have trusted for that publicity of the limited nature of the right on which the fecurity of the public must depend; and in place of fending all the conditions of the deed to the common register of sasines, this feparate and new register, dedicated folely to those deeds which were meant to be effectual against creditors and purchasers, was devised and fet apart, apparently with a view of feparating them more completely from the common land rights of the country.

The act declares, 'That fuch tailzies only 'fhall be allowed, in which the forefaid irritant and resolutive clauses are inserted in the

procuratories of refignation, charters, pre-

cepts, and instruments of sasine, and the ori-

' ginal

- \* ginal tailzie once produced before the Lords
- · of Seffion judicially, who are hereby ordain-
- ed to interpose their authority thereto; and
- \* that a record be made in a particular register
- book to be kept for that effect, wherein shall
- be recorded the names of the maker of the
- tailzie, and of the heirs of tailzie, and the
- separal designations of the lordships and ba-
- ronies, and the provisions and conditions
- contained in the tailzie, with the foresaid ir-
- ritant and resolutive clauses subjoined here-
- to, to remain in the faid register ad perpetu-
- \* am rei memoriam. ' The terms in which this regulation is expressed, does not require that the whole of the entail should enter the register; as, in case of any omission in recording the entail, the consequences of the omission might be materially affected by this part of the act. The original entail therefore must, under this regulation, be produced before the Court; and the form in which this is done, is by a petition in the name of the granotr, institute, or any of the heirs of entail, of which the following is an example.

Petition for Recording an Entail.

Unto the Right Honourable the Lords of Council and Session,

THE PETITION of A, Esq. of A;

HUMBLY SHEWETH,

That of this date (the date on the margin), the petitioner executed a tailzie of the lands of , lying in , in favour of himself, and the heirs male of his body; whom failing, the other heirs and substitutes therein mentioned, containing the usual prohibitory, irritant, and resolutive clauses; which deed is herewith produced: And the petitioner being desirous to have the same recorded in the Register of Tailzies, in terms of the act 1685, he makes this application to your Lordships, that, in obedience to the directions of that statute, you may interpose your authority to the said tailzie, and grant warrant for recording thereof.

MAY IT THEREFORE PLEASE your Lordships to interpone your authority to the said deed of entail, and grant warrant to the keeper of the Register of Tailzies, for recording the same in the Register, agreeably to the act of Parliament 1685.

According to Justice, &c.

Signed by Counsel.

Alongst

Alongst with this application, the principal deed, as already mentioned, must be produced to the Judges, who, after advising, will pronounce the following judgment. 'The Lords' having heard this petition, and the deed of entail therein mentioned being produced, they interpone their authority thereto, and ordain the same to be recorded in the particular register kept for that purpose, in terms of the act 1685; and decern.' On this an act is extracted, which serves as a warrant to the keeper of the Record of Entails, to record the entail. The entail is recorded, by a full copy entering the record; on which the principal deed is returned, with a docquet, certify-

I shall give another example of this application, where the deed has been executed under the express sanction of an act of Parliament.

ing the registration of the deed.

Petition for Recording an Entail executed under an Act of Farliament.

Unto the RIGHT HON. the LORDS of COUNCIE and Session,

### THE PETITION of A;

Humbly sheweth,

That in terms of an act of Parliament passed in the 36th year of his Majesty's reign, enabling the vol. v. \* L petitioner

petitioner to exchange the property of the lands , in the parish of and shire of , part of the entailed estate of A, for the property of the lands of , in the parish of , and fhire of ; belonging to B; and the lands of , belonging to the petitioner, alongst with the said B, and B his fon, did, on the day of execute a disposition and deed of tailzie of the lands of , with the pertinents, in fayour of the petitioner and the heirs of entail in the estate of A, with and under the whole conditions, provisions, limitations, and others contained in the original deed of entail of the estate of A; which tailzie has been examined and approved of by your Lordships, as directed by the act of Parliament; and it only remains that the tailzie should be recorded in the register of tailzies; for which purpose it is now again produced to your Lordships.

May it therefore please your Lordships to grant warrant to the keeper of the Register of Tailzies, to record the foresaid deed of tailzie in that register, agreeably to act of Parliament 1685, &c.

According to justice, &c.

Signed by Counsel.

The same procedure as in the former case takes place here; and the entail, under authority

rity of the Court, enters the record; and the registration is authenticated by the keeper of the register.

It will fometimes happen, that the deed of entail is already on record in the Register of the Court of Session; but as the directions of the act 1685 require the production of the original deed, the application to the Court must contain a prayer for having the principal deed transmitted from the Register; or this may be done by a separate application.

Where the business is managed by separate applications, a warrant is extracted on the petition, for getting up the original entail, on which warrant the deed is got from the record, and, being presented alongst with the petition for recording, the rest of the procedure is in the ordinary courfe. Where both applications are in the same petition, a warrant is granted for producing the entail, which is extracted, and the deed recovered, before any step can be taken in the recording. When the entail is on this warrant produced, it is lodged with the clerk to the petition, and a note given in to the Lord President, stating to his Lordship that the deed is now produced, and praying his Lordship to take up the other prayer of

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the petition, and to order the entail to be recorded. The petition is then of new taken up, and warrant granted for recording the entail.

Where the principal entail cannot be produced by the person desirous of having the entail recorded, it is by an ordinary action before the Court, praying for exhibition of the deed, and for having it recorded, that he can attain his object. The action may be brought in the following shape.

Summons of Exhibition, and for Recording an Entail, where the Institute is not in possession of the original Deed of Entail.

GEORGE, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, To

, messengers at arms, our Sherists in that part, jointly and severally, specially constituted, greeting. Whereas it is humbly meant and shown to us by our lovites Mrs JF, eldest lawful daughter of the deceased William Lord F, now wife of JD, and Mrs EF, the only other daughter now alive of the said William Lord F, and wife of JG, and the said JD and FG for their respective interests; That by contract of marriage passed betwixt the said William Lord F, and DD, the complainers' father and

and mother, with the special advice and consent of the faid William Dale, of the one and other parts, bearing date , the faid William Lord F, in contemplation of the faid marriage, and for the tocher therein stipulated, bound and obliged him, his heirs and fucceffors, duly and fufficiently to infeft and seise himself and the said D D, and longest liver of them, in liferent, for the faid D D, her liferent use allenarly, in case she should happen to furvive him, and the heirs male lawfully to be procreated between them, in fee; WHICH FAILING, the faid William Lord F, his other heirs male whatfoever; which failing, the heirs female to be procreated between the faid William Lord F, and the faid D D; which FAIL-ING, the heirs female to be procreated by the faid William Lord F, in any other marriage, the elder heir female, in all degrees of fuccession, always fucceeding without division; WHICH ALL FAIL-ING, the faid William Lord F, his heirs and affignees whomsoever, heritably and irredeemably, in ALL and WHOLE—(here the lands as described in the marriage contract were inserted)-BUT with and under the express refervations, provisions, conditions, declarations, restrictions, and clauses irritant and limitations particularly inferted in the faid contract of marriage; by which, amongst other things, it is provided and declared, that it shall not be lawful nor in the power of the faid William Lord F, nor any of the heirs of tailzie above specified,

specified, to alter, innovate, or infringe the said tailzie or order of succession therein appointed, or the nature, quality, and precife terms thereof, in prejudice of the heirs of tailzie above mentioned, nor contract any debt upon the same (except in the cases therein mentioned), nor do any deed, civil or criminal, whereby the order and course of fuccession above mentioned may be diverted; and in case any of the heirs of tailzie above mentioned shall fail, and do in the contrary, then the deeds fo done, and debts contracted, shall not only be void and null, but the contravener shall ipso facto amit and lose all right he or she might have pretended to the faid lands and estate, under the faid entail or otherwise: and the next in order of fuccession, who would have succeeded had the contravener been naturally dead, shall have the right thereto, as from the faid contract of marriage, containing procuratory of refignation, clause of registration, and precept of fasine, more fully will appear: And the faid William Lord F, having died in the month of , leaving only one fon F, afterwards Lord F, who died fometime thereafter, without leaving issue of his body, the purfuers, who are the only daughters now alive of the faid marriage between William Lord F, and D D, and as fuch are heirs fubftituted in the faid entail, and have good and undoubted right to call for exhibition thereof, and to have the fame recorded, in terms of the act

·1865, concerning tailzies; AND although they have often desired and required James, now Lord F, as heir ferved and retoured to the faid William Lord F, his brother, to exhibit and produce the forefaid contract of marriage and tailzie -before our Lords of Council and Session, in order to have the same recorded in the Register of Tailzies, in terms of the faid act of Parliament, and also in the books of Council and Session, for preservation; yet he refuses to to do: And there-FORE, the faid J, Lord F, ought and should be DE-CERNED and ORDAINED, by decree of our faid Lords of Counciland Session, to EXHIBIT and PRODUCE the faid original contract of marriage passed betwixt the faid deceased W Lord F, and D D, in presence of our faid Lords; And the faid original contract being so produced, our faid Lords ought, in terms of the faid act of Parliament, to approve thereof, and to ordain the same to be recorded in the regifter of tailzies, and to grant warrant to the : keeper of that register to that essect: AND FUR-THER, the said | Lord F ought and should be decerned and ordained, by decree forefaid, to record the same in the books of our Council and Session, in terms of the clause of registration therein contained, on his own expense; and he ought and should be further ordained to make payment to the pursuers of the expenses of the faid registration in the Register of Tailzies, and of the sum of .201. Sterling, or fuch other fum as our faid Lords

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fhall

shall modify as the expense of this process, besides the expense of extracting the decree to follow hereon, after the form and tenor of the said act of Parliament and writings libelled on, and laws and daily practice of Scotland used and observed in the like cases in all points. Our will is HEREFORE, &c. (in common form).

In this action the original deed of entail will be ordered to be produced; and, being produced, decree will be given for recording it.

Later practice has allowed of a furmary petition, even where the petitioner has not been in possession of the entail; and the Court has allowed diligence for recovering the deed.

In one or other of these ways the entail will enter the Record of Entails; and it is by the union of these two forms, the entry of the conditions of the deed and clauses irritant and resolutive in the Register of Sasines, through the instrument of Sasine, and the entry of the entail in the Register of Tailzies, that the conditions of the act of Parliament are complied with, and the entail rendered effectual.

# SECT. IV. OF COMPLETING THE ENTAIL IN THE PERSON OF THE INSTITUTE.

In the three preceding sections I have endeavoured to give examples of the form of the Deed of Entail, and of the means prescribed by the statute for rendering the entail effectual against creditors and purchasers; but as it is the object of the grantor to convey the entailed estate to the institute, to be held of his superior, it is proper we should now inquire in what manner this object is to be attained.

In completing the title of the purchaser, the principle has been explained, and the forms of of deeds given, by which the purchaser is brought into the place of the seller; and the same principle is followed, and almost the same forms used, in order to make the institute hold of the grantor's superior. I shall, in treating of this subject, take, first, the case where the lands hold of the Crown.

### 1. Where the Lands hold of the Crown.

1. Confirmation.—If we suppose same to have followed on the entail, and that the lands hold of the Crown, the title in the person of the

the inflitute will be completed by a charter of confirmation; the first step to which is the prefenting a signature of confirmation in Exchequer, the procedure corresponding precisely with that which has been explained in the first volume, in treating of the purchaser's title where the lands hold of the Crown. The signature will be in the following form.

Signature of Confirmation of the Deed of Entail, and Instrument of Sasine following thereon, in favour of B.

OUR SOVEREIGN LORD, with the special advice and confent of J M Esq., Lord Chief Baron of his Majesty's Court of Exchequer, in that part of Great Britain called Scotland, F N Efg., Sir J DHMG Baronet, CG and AC Esquires remanent Barons of his Majesty's said Court of Exchequer, ORDAINS a charter to be made and palfed under the feal appointed by the treaty of union to be kept and used in Scotland, in place of the great feal thereof formerly used there, RATIFYING and APPROVING, and for his Highness and his royal fuccessors, perpetually confirming, likeas his Majesty, with advice and consent foresaid, by these presents, RATIFIES and APPROVES, and for himself and his royal successors, perpetually con-FIRMS to his Majesty's LOVITE B, now of

, a disposition and deed of entail made

and executed by A, of date . whereby, for the causes there stated, and in implement of his part of the marriage articles therein specified, BUT ALWAYS WITH AND UNDER the burdens. provisions, conditions and declarations, and clauses prohibitory, irritant and refolutive, therein and after expressed, allenarly, and no otherwise, he SOLD, ALIENATED and DISPONED, from him, his heirs and fuccessors, to and in FAVOUR of B his fon, and the heirs male of the marriage entered into betwixt the faid B and C; WHOM FAILING, to the heirs female of the faid marriage, and the heirs whomsoever of their bodies respectively, the eldest daughter or heir female, excluding heirs portioners, and fucceeding, without division, through the whole course of succession; whom all fail-ING, to the faid B, his nearest heirs and assignees whomfoever, heritably and irredeemably, ALL and WHOLE—(here the lands are fully described)—BUT ALWAYS WITH AND UNDER the provisions, declarations, conditions, limitations and claufes prohibitory, irritant and resolutive, therein and after mentioned, viz. WITH AND UNDER THE CONDI-TION ALWAYS, as it is hereby expressly PROVIDED and DECLARED, that the faid B and the whole heirs thereby called to the succession of the said lands and others, shall be BOUND and OBLIGED, upon the fuccession opening to them respectively, in virtue of the faid entail, to assume, use, and bear the furname of A, and the arms and defignation of A of A, as their own proper furname, arms

arms and defignation; As ALSO, with and under these conditions and provisions always, &c.—(here the other conditions of the entail will be narrated, until you come to the words ACTS, INSTRUMENTS, and DOCUMENTS, changing them only in so far as the form of a narrative may require)—with and UNDER all which burdens, conditions, provisions and declarations, and claufes prohibitory, irritant and resolutive, above mentioned, the said disposition and deed of entail is expressly made and granted, and no otherways; which disposition and deed of entail contains an obligation on the faid A, his heirs and succeffors, to infeft and seife the faid B and the heirs of entail thereby substituted to him, TO BE HELD either from him the faid A and his foresaids, of and under their respective superiors of the same, as freely as he held or might have held the faid lands and others himself, or of and under him and his foresaids, in manner therein mentioned, and that either by resignation or confirmation, or both, or either, the one without prejudice to the other, BUT ALWAYS with and under the conditions, provisions, restrictions, limitations, clauses prohibitory, irritant and resolutive, therein and before written, with a PRECEPT of SASINE applicable thereto, as the faid disposition and deed of entail more fully bears; As ALso, the instrument of sasine of the lands and others above described taken in favour of the faid B in virtue of the foresaid precept of sasine, contained

contained in the faid deed of tailzie, of date and recorded in

the Register of Sasines,
the day of

AND THAT in the whole heads, clauses, articles, tenor and contents of the faid feveral writings; DISPENSING hereby with the GENERALITY of this CONFIRMATION, and DECLARING that the same is and shall be as valid and effectual, and of as great force, strength and effect, as if the said disposition and deed of entail, precept of sasine therein contained, and instrument of safine following thereon, were all herein verbatim inferted, and as if this confirmation had been granted before the taking of the faid fasme; WHEREANENT, and with all other objections, defects, or imperfections, that can be anywife alleged or objected against the fame, and this confirmation thereof, if any be, HIS MAJESTY has DISPENSED, and by these prefents, with confent foresaid, DISPENSES for ever. To BE HOLDEN and to HOLD, &c.—(This clause will be regulated by the holding of former crown charters)-Paying, &c. (This clause in like manner will be regulated by the reddendo of the former charter). - And that the faid CHARTER be Ex-TENDED in ample form, with all clauses needful, and precepts be directed thereupon. GIVEN AT Edinburgh, &c.

The charter following on this fignature is completed in the manner which has been already

ready explained in the first volume, when treating of the purchaser's title, and to that I must refer: When completed, it makes the Institute hold of the crown; and, when joined to Registration in the Register of Tailzies, perfects his right in the fullest and most ample manner.

2. Resignation.—It may happen, that in place of completing the title in this manner, the institute may chuse to resign on the procuratory in the entail, and take a charter of resignation from the Crown. The signature in that case will be of the form following.

## Signature of Resignation in favour of the Institute in the Entail.

OUR SOVERING LORD, with the SPECIAL AD-VICE and CONSENT, &c. (in common form) ORDAINS a charter to be made out and passed, &c. (in common form) to and in FAVOUR OF R A eldest lawful son of G A, and the heirs male of his body; WHOM FAILING, to the other heirs male of the body of the said G A, &c. (the destination was here copied verbatim) ALL AND WHOLE (here the lands were in like manner copied verbatim) BUT ALWAYS with and under the several burdens, conditions, provisions, restrictions, limitations, clauses irritant and resolutive, and declarations herein particularly after inserted, viz. FIRST, (here the conditions of the entail were all verbatim engrossed)

WHICH

WHICH LANDS, teinds, and others above written, pertained heritably before to G O and W F the only furviving trust disponees, named and appointed by the deceased G A by two trust difpositions and assignations in their favour, and in favour of M and R both fince deceafed, and the furviver or furvivers of them, and major part of fuch furvivers, in trust, for the uses and purposes mentioned in the said trust dispositions, which are dated , and registered ; AND WHICH LANDS, teinds, and others foresaid, were HELD by the said trustees, of his Majesty, in manner herein after mentioned; AND by DISPOSITION and DEED OF ENTAIL, dated VEYED by the faid trustees to the faid R A and . the heirs of tailzie substituted to him in manner foresaid; with and under the several conditions, provisions, restrictions, limitations, clauses irritant and resolutive, and declarations herein before inferted, AND were, in virtue of a procuratory of refignation, with all right, title and interest competent to the faid trustees or their authors, duly and lawfully RESIGNED by the lawful procurators of the faid trustees, specially constituted to that effect, IN THE HANDS of the faid

for himself, and in name of the other barons of the said Court of Exchequer, having power to receive resignations, and grant new infetments, in favour and for new infestments of the same to be MADE, GIVEN, and GRANT-

ED to the faid R A and the heirs male of his body, (here the destination was again verbatim repeated) BUT ALWAYS with and under the conditions, provisions, restrictions, limitations, clauses irritant and resolutive, and declarations herein before engrossed, and that in due and competent form, as authentic INSTRUMENTS, taken on the said resignation in the hands of

notary-public, at more length purport; AND MOREOVER, his Majesty, with consent foresaid, WILLS and GRANTS, and for him and his Royal fuccessors. DECERNS and ORDAINS, that one sasine, &c. (in common form)—TO BE HELD, and for to HOLD, ALL and WHOLE the faid lands, teinds and others, with the pertinents, all lying and described as aforesaid, by the said R A and the heirs of tailzie substituted to him, in manner foresaid. of his Majesty, &c. (in common form) GIVING yearly for the said lands, teinds, pasturage, milis, fishings, and others above conveyed, the faid R A and the heirs of tailzie succeeding to the faid lands and estate, To his Majesty and his Royal fuccessors, &c. (in common form) AND THAT the faid CHARTER be EXTENDED in ample form, with all clauses needful, and precepts be directed thereon. GIVEN AT EDINBURGH. &c.

That I may show the form of the Crown charter on the entail, as well as give a further example of the conditions of this deed, I sub-

join a Crown charter of relignation on an entail, containing also a novodamus and the constitution of a burgh of barony.

Carta Resignationis et de Novodamus J M in vitali reditu, et J M ejus filii legitimi natu maximi in feodo, Baroniæ de M aliorumque.

GEORGIUS, Dei gratia, Magnæ Britanniæ, Franciæ, et Hiberniæ, Rex, Fidei Defensor, omnibus probis hominibus totius terree suze clericis et laicis salutem; Sciatis nos, cum avisamento et confenfu Jacobi Montgomery armigeri, domini capitalis baronis scaccarii nostri in illa parte regni nostri Magnæ Britanniæ Scotia vocat. Fletcheri Norton armigeri, domini Joannis Dalrymple baronetti, Cosmi Gordon et Archibaldi Cockburn armigerorum, remanen. dict. scaccarii baronum, dedisse, concessisse, disposuisse, et hac præsenti carta nostra confirmasse, tenoreque ejusdem DARE, CON-CEDERE et DISPONERE, ac pro nobis nostrisque regiis successoribus pro perpetuo confirmare di-LECTO nostro J M de M, armigero, in vitali reditu, et J M ejus filio legitimo natu maximo, et hæredibus masculis ex ejus corpore, QUIBUS DEFI-CIEN. hæredibus fæmellis ex ejus corpore, QUIBUS DEFICIEN. M M ejus filio legitimo natu fecundo et hæredibus masculis ex ejus corpore, quibus DEFICIEN. hæredibus fæmellis ex ejus corpore, QUIBUS DEFICIEN. G M ejus filio legitimo natu tertio, et hæredibus masculis ex ejus corpore, M VOL. V. QUIBUR

QUIBUS DEFICIEN. hæredibus fæmellis ex ejus corpore, QUBUS DEFICIEN. ulli quarto, quinto, seu alio filio juniori legitimo procreand. ex corpore dict. I M senioris, secundum eorum senioritatem successive et in eorum ordine; et haeredibus respectivis corporum talium filiorum natu juniorum in eorum ordine præscript. QUIBUS DEFICIEN. A M ejus legitimæ filiæ natu maximae hæredibus mas: culis ex ejus corpore, QUIBUS DEFICIEN. hæredibus fæmellis ex ejus corpore, QUIBUS DEFICIEN. ulli secundæ, tertiæ, seu aliæ filiæ juniori ex ejus corpore procreand. fuccessive in ordine secundum senioritates earum, et respectivis hæredibus ex corporibus dictarum filiarum fuccessive in ordine præscripto, QUIBUS DEFICIEN. G M filio legitimo natu fecundo nunc defuncti I M de M, patris dict. J M senioris, et hæredious masculis ex ejus corpore, QUIBUS DEFICIEN. hæredibus fæmellis ex ejus corpore, &c. &c. Quibus omnibus deficientibus tali aliæ personæ sen personis quas dict. defunctus J M per ullum scriptum sub manu ejus, in diet. terris et statu eum succedere nominavit et statuit, talia. nominatione deficien. aut personis nominand. corumq. haredibus inibi mentionat. deficientibus, tunc dict. defuncti I M hæredibus proximis quibulquique in feodo, hærede fæmella natu maxima et descenden. ex illius corpore femper excluden. omnes alias hæredes portionarias, et per univerfum successionis cursum tam hæredum talliæ quam aliorum hæredum quorumcunque antes mentionat. omni tempore futuro absque divisione fucceden.

fucceden. et jure primogenituræ locum capescente inter sæmellas hæredes simili modo ac lex inter masculos hæredes stabilivit; omnes et singu-LAS, &c. &c. omnes jacen. in parochia de

et senescallatu de

una cum omni jure, titulo, interesse, juris clameo, proprietate et possessione, tam petitoria quam possessione, quæ dict. J M de M aut ejus auctores aut prædecessores, hæredes aut successores, habuerunt seu habent ad prædictas terras, jus patronatus, decimas, multuras aliaq. prædict. clamare seu prætendere poterint, semper cum et sub diversis oneribus, conditionibus, provisionibus, restrictionibus, limitationibus, clausulis irritan. et resolutivis, aliisque content. in dispositione talliæ, lie deed of entail, de data

anno Domini et regif-

postea script. quæ omnes in resignationis instrumento, cartis, et sasinæ instrumentis, super præsentibus sequend. et in omnibus sequen. servitiis, retornatibus, procuratoriis, et resignationis instrumentis, cartis, preceptis et instrumentis sasinæ, et in omnibus aliis juribus et transmissionibus dict. terrarum aliorumq. præscript. verbatim inserendæ sunt, viz. cum et sub hoc onere, sicuti per præsentes expresse pactatur et providetur, quod si hæredes sæmellæ talliæ dict. J M de M virtute harum præsentium seu prædict. nominationis succederunt, tunc et in tali casu hæres sæmella natumaxima et descendentes ex ejus corpore exclu-

dent juniorem ejusque descendentes ut ne sint hæredes portionariæ et semper absque divisione succedent: et cum et sub hac conditione sicuti per præsentes specialiter providetur, quod universi hæredes tam masculi quam sœmellæ dict. I M de M tam generales quam talliæ fupra mentionat. et descendentes ex corum corporibus sic succeden. obligabuntur, post fuam successionem, retinere, assumere et uti cognomine et designatione de M de M pro eorum primo et principali cognomine et designatione, nisi in hoc casu quod prædict. talliat. terræ et status de M ac etiam alius talliat. status de L qui in certis eventibus defuncto patri dict. I M de M et descendentibus ex ejus corpore providetur per talliæ obligationem per etiam defunctum | M de M, N G eius sponsam conet in libris concess. de data cilii et sessionis registrat. contigerint in persona cujusvis hæredis ad ambos status succedentis conjungi; quod tunc talis hæres non obligabitur assumere, retinere et uti cognomine et designatione de M de M donec talis hæres duos liberos habebit quorum unus talliato statu de M et alter dict. talliato statu de L fruatur, sed post talem divisionem diet. duorum talliat. statuum universi talliæ hæredes fupra mentionat. terras per præsentes refignat. possiden. astringentur et obligabuntur dict. cognomine et designatione de M de M assumere, retinere et uti, et sic deinceps per totum successionis cursum sub exceptione prædict.

dict. et cum et sub hac limitatione et provisione. sicuti per præsentes expresse providetur et declaratur, quod terræ et status per præsentes resignat. non efficientur et onerabuntur neg. obnoxiæ forent appretiari, adjudicari, seu quovis alio modo evinci, propter debita seu facta, per dict. J M juniorem, aut per ullum talliæ hæredem priusquam tali successioni succeden. contracta seu concessa, aut propter ulla debita feu facta quæ per prædict. I M juniorem ullisve ex talliæ hæredibus prædict. post talem successionem contrahantur vel concidantur, excipien. ut postea except. est, et cum et sub hac limitatione et restrictione, quod non licitum erit nec in potestate dict. I M junioris. nec ullorum talliæ hæredum et provisionis masculorum vel fæmellarum nominat. per prædict. defunctum I M de M alterare, innovare, aut mutare talliam ordinemque successionis antea præscript. per ullam nominationem aut aliud factum fic ut prædicitur, nec ullum aliud factum facere, quod ullam alterationem, innovationem seu mutationem ejusdem, directe vel indirecte importare vel inferre poteret, nec vendere, alienare, disponere aut absque redemptione seu sub reversione, nec etiam impignorare aut eum annualis reditus infeofamento feu ulla alia fervitudine feu onere prædict. talliat. terras et statum aut ullam partem carundem onerare; AC ETIAM providetur, quod non licitum erit prædict. J M juniori, aut ulli hæredum generalium seu talliæ antea script. assedationes

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dationes vel rentales prædict, talliat, terrarum et status locare, pro longiore termino quam unius et viginti annorum, et sine diminutione rentalis, seu pro vitæ locatoris duratione, in casu ullius diminutionis rentalis, nec debita contrahere, nec læsæ majestatis crimen, quod Deus avertat, committere, nec ullum aliud factum vel actum omifsionis aut commissionis civile vel criminale, directe. seu indirecte, ullo modo facere qua propter prædict. terræ et status aut ulla pars affici, adjudiçari, forisfieri aut eschetari vel confiscari seu ullo alio modo evinci poterit a dict. J M juniore vel talliæ hæredibus supra script. vel qua propter dict. talliæ et fuccessionis ordo præjudicari, lædi aut mutari poterit, neque prædict. J M junior nec ullus dict. hæredung generalium seu talliæ supra nominat. patietur census publicos, relevii casualitates, nec feudifirmas albas vel decimarum divorias, nec alia realia publica onera et divorias quascunque, ex prædict. talliat. terris et statu persolubilis, non fatisfactas adcurrere, pro quibus, terræ aliaque prædict. appretiari, adjudicari, aut evinci poterunt a prædicto J M juniore aut illis; pro superioritatis quibusvis casualitatibus aut aliis realibus vel publicis oneribus uti præscript. est, neque prædict. J M junior nec ullus aliorum talliæ hæredum nominat. patietur prædict. talliat. terras et statum aut ullam partem ejusdem evinci vel ab illis abduci per appretiationem aut adjudicationem contra easdem expediend.; pro quibusvis debitis

seu actis, contractis, factis aut concessis per prædict. I M de M aut pro quibusvis debitis seu factis per eum contrahend, et concedend, priusquam præsentes perfectæ efficaces redditæ fuerint, per cartas et infeofamenta super easdem expediend. seu quibus prædict. hæredes et talliat. terræ per legem subjici contigerint; et quod, in casu ullo, tales appretiationes seu adjudicationes obtentæ fuerint, tunc dict. J M junior et hæredes, et geperales et talliæ supra nominat. prædictis terris et Ratu succeden, et qui in possessione ejusdem erunt, tametsi minorennes sint pro tempore, tenebuntur et obligabuntur easdem expurgare saltem intra sex annos priusquam legale talium appretiationum et adjudicationum terminabit; et si fortasse contigerit persona qui in possessione erit, tametsi minorennis pro tempore sit, easdem saltem intra fex annos ante legalis terminationem, non expurgabit vel redimet, tune ejus jus ad dict. talliat. terras statumque et ad redemptionem prædict. diligentiæ cadet et accrescet proximo talliæ hæredi qui successerit si persona contraveniens naturaliter mortuus fuisset, et qui tametsi minorennis pro tempore dict. jus ad prædict. terras statumque in fui ipsius persona stabilire obligabitur et astringetur et prædict. appretiationes aut adjudicationes saltem intra quatuor annos ante legalis terminationem expurgare—(and so the deed goes on, giving a right to the nearest heir to redeem within two years; and, should he fail, a power is given

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given to the next heir to redeem within six months; it then proceeds)—Et si contigerit talis hæres jus stabilire et talem diligentiam expurgare ut prædicitur intra sex menses ante legalis terminationem deficerit, tunc jus dict. terrarum et statuum ullo fublequen, talliæ hæredum propinguiorum seu remotiorum dict. I M senioris cui visum fuerit ante legalis terminationem redimere cadet et accrescet, et qui jus stabilire simili modo habebit accessum ac si universi propinquiores hæredes contravenientes naturaliter mortuus fuissent; et cum et sub hac conditione et restrictione, sicuti per præsentes providetur, quod dict. J M junior et omnes hæredes generales seu talliæ supra mentionat. dict. talliat. terris et statu possidebant et fruentur virtute præsentium infeofamentorum, jurium et transmissionum super easdem sequend. et per nullum aliud jus seu titulum quodcunque; et quod prædict. I M junior et universi hæredes tam generales quam talliæ supra nominat, semetipsos tempestive intrat. infeodat. et sasit. in prædict. terris et statu obtinere obligabuntur, et easdem in nonintroitu jacere neutiquam finent, ac etiam universum ordinem cursumque successionis in his præsentibus content. et diversas conditiones, limitationes, provisiones, irritantias aliaque in his præsentibus content. inscribere et verbatim inserere facient in instrumento resignationis cartis et infeofamentis desuper sequend. et in omnibus subsequen. procuratoriis et infeofamentis resignationis,

tionis, cartis, servitiis, retornatibus, præceptis desuper sequen. et præceptis et instrumentis sasinæ aliisque transmissionibus dict. talliat. terrarum et status; et cum et sub hac conditione et limitatione semper, quod uxores prædict. I M de M et dict. I M ejus filii natu maximi et uxores et mariti dictorum diversorum hæredum, et generalium et talliæ, fupra mentionat. funt et erunt exclusi et interdicti ab omni jure tertiæ et curialitatis ad vel super dict talliat terras et statum seu ullam partem ejusdem, ulla lege aut confuetudine in contrarium non obstan.; et cum et sub sequent. irritatione ficuti per præsentes specialiter pactatur et providetur, quod, si forte, dict. J M junior seu ullus hæredum generalium seu talliæ antea mentionat. præmissas, conditiones, provisiones, restrictiones aliasque limitationes in his prefentibus content. contravenerit, id est, desecerit vel neglexerit prædict. conditiones et provisiones et unamquamque earum obedire seu perficere, aut in contrarium prædict. conditionibus et restrictionibus seu earum cuiviscunque egerit, tunc et in ullis horum casuum, non solum omnia talia acta facta, et facinora contracta, perfecta seu commissa, his præsentibus seu vero proposito et sensui earund. contraria, cum omnibus quæ desuper sequi possint in semetipsis vacua nulla, et nullius vis, roboris seu effectus erunt, saltem irrita et inessicacia erunt contra reliquos talliae haeredes terrasque aliaque praedict. quae, nec ulla pars earundem, ullo modo cam

sum iisdem onerabuntur, similiter ac si talia debita facta commissionis seu omissionis, non perfecta seu concessa suissent, seu nunquam contigisfent; sed etiam persona seu personae sic contravenientes per defectum in obediendo dict. conditionibus aut in contrarium dict. prohibitionibus aut ullis earundem agendo, pro seipso seu seipsa solummodo, ipío facto, omne jus, titulum et interesse amittet, delinquet et perdet, quod ille seu illa ad praedict. terras et statum habet idemque vacuum et extinctum fiet, et praedict talliat terrae et status devolvent, accrescent, et pertinebunt proximo talliae haeredi succedere destinat. tametsi ex corpore ipfius contravenientis descenso, similiter ac si ipse contraveniens naturaliter mortuus suisfet; et licitum et legitimum erit tali proximo haeredi tametsi minorenni, pro tempore, licet ex ipfius contravenientis corpore descenso, actiones prosequi et decreta declaratoria obtinere, supra contraventione et supra irritantia juris contravenientis. vel seipsum haeredem deservire personae quae in dict. terris ante personam contravenientem ultimo vestit. et sasit. obiit, atque hoc modo, seu per adjudicationem, vel per ullam aliam formalem ve legalem viam, in persona sua, jus ad et in praedict. talliat, terras et statum stabilire, absque subjiciendo seipsum vel obnoxium faciendo debitis et factis personae sic contravenien, et sine respectu ad ullam alterationem factam, vel acta seu facta concessa per contravenientem, conditionibus et reftrictionibus.

strictionibus in præsentibus content, vel vero intentui et proposito eorundem contraria, et per præsentes præterea providetur et similiter in universis procuratoriis, et instrumentis resignationis, cartis, præceptis, et instrumentis sasinæ, servitiis, retornatibus, aliisque titulis et transmissionibus prædict. status inscribetur, quod si quivis talliæ hæredum ante eorum successionem ad dict. terras et flatum, committet et crimen læsæ maiestatis reus et ejus convictus seu attinctus erit, talis persona deinceps ab omni successionis jure, ad dictas terras et statum, omnino interdicitur et excludetur, et eadem, proximo talliæ hæredi fuccedere constitut. devolvet et pertinebit, tametsi descenso ex corpore personæ qui criminis læsæ majestatis sic costvictus seu attinctus erit, simili modo ac si talis persona naturaliter mortuus fuisset, et licitum et legitimum erit tali propinquiori hæredi, tametsi minorenni pro tempore, actiones profequi, et decreta declaratoria obtinere, et seipsum heredem, personæ quæ obiit ultimo vestit. et sasit. deservire, et hoc modo feu ulla alia legali via, in perfona sua, jus dictarum terrarum et status stabilire et persona sic succeden. super talem contraventionem vel super talium hæredum commissionem et convictionem criminis læsæ majestatis, et omnes subsequen. hæredes generales et talliae iisdem irritantiis per universum successionis cursum in perpetuum obnoxii erunt; Refervan. plenam potestatem et libertatem dict. J M et praedict. talliae haeredibus

haeredibus assedare in seudifirma ullam partem ex praedict. duobus stillagiis de hordeaceis et triticeis crostis ejusd. et terras de

fine diminutione rentalis: Ac etiam reservan. potestatem et libertatem dict. J M seniori, ullo tempore, affedationes dict. talliat. terrarum et status assedare, pro quovis spatio non exceden. spatium unius et viginti annorum sine diminutione rentalis, et excipien. et reservan. extra et ab praedict. clausulis irritan, plenam potestatem et libertatem dict. I M de M et dict. I M ejus filio natu maximo et dict. diversis haeredibus generalibus et talliae, et declaran, quod dicto J M seniori et illis licitum et legitimum enit, suas legitimas uxores et maritos in competen. vitalis reditus provisionibus infeodare, de et ex terris aliifque praedict. non exceden. unam quartam partem pleni reditus dictarum terrarum et status pro tempore, providen. semper quod nec dict. conjuges masculi seu sœmellæ haeredis quoquomodo inseodati seu fasiti erunt in quovis annuali reditu seu annuitatibus desumend. ex praedict, terris et statu seu ex quavis parte earundem, sed in terris ipsis pro tali portione annuorum earundem redituum illis modo localitatis solvend, ita ut uxores et mariti reditus ipsos desumant et accipiant, et succeden, haeredes talliae pro solutione ejusd. neutiquam obligati seu astricti sint; Et excipien. et reservan, etiam plenam potestatem et libertatem dict. J M seniori, et dict. J M ejus filio natu maximo

maximo, et dict. hæredibus generalibus et talliæ fupra nominat.; et declaran. quod præmissis non obstan: licitum et ligitimum erit dict. I M seniori et illis obligationes provisionis modo postea specificat: suis junioribus liberis concedere qui ad dict. terras non succedunt; et pro solutione competen. provisionum illis, et pro nullo alio usu seu proposito, et pro tali summa quæ in totum non excedet quatuor annorum plenum reditum prædict. talliat. terrarum et status secundum rentalem, ad tempus talis provisionis obligationes concedendi, et quæ obligationes et provisiones per prædict. J M seniorem et J M eius filium natu maximum et heredes talliæ concedendæ particularem qualificationem postea seript: continebunt et comprehendent, sicuti per præsentes expresse providetur et declaratur, quod nec licitum nec legitimum erit prædict. J M seniori, seu J M juhiori, vel aliis talliæ hæredibus seu eorum quibusvis, sub pœnis irritantiæ antea script. ullam partem dict. terrarum et status vendere vel alienare, pro folutione provisionum talium liberorum, quæ per præsentes concedi permittuntur, neque ulla adjudieatio dict. terrarum et status quæ obtineatur, pro fecuritate folutionis provisionum talium libeforum ita concedend: unquam expirabit, seu jus irredimabile unquam fiet, sed omnes tales appretiationes seu adjudicationes vel aliæ diligentiæ obtinendæ seu utendæ, pro solutione talium provisionum loco realis securitatis pro solutione principalium

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palium fummarum per easdem debit. et annualium redituum qui super iisdem accrescant solummodo stabunt et semper redimabiles erunt per dict J M de M, et I M ejus filium natu maximum, et hæredes talliæ antea specificat. in et per solutionem tantum principalium fummarum annualis reditus, et impensarum persolutarum absque ulla pænarum accumulatione, fed declaran, quod personæprædict. talliæhæredum et ullus alius realis seu personalis status'iis pertinen. (except. dictis terris et statu antea mentionat.) ac etiam duæ tertiæ partes annualium redituum et proficuum dict. talliat. terrarum et status ipsarum ulli diligentiæ per legem competenti, semper subject æ et obnoxiæ erunt, pro solutione talium provisionum ad liberos, quæ per præsentes concedi permittuntur, cum et sub his conditionibus et provisionibus etiam quia per irritantiam prius; in his præsentibus script. providetur quod ullus hæres contraveniens pro seipso vel seipsa solummodo suum jus ad dict. terras et statum amittet, fed neutiquam intenditur vel intelligitur, quod descendentes ex corpore contravenientis, ab eorum successionis jure, propter talem contraventionem abscinderentur, igitur per præsentes expresse providetur et declaratur quod tamersi proximus talliæ hæres, pro tempore existens, super defectum, seu contraventionem, anterioris hæredis, jus et titulum ad dict. talliat. terras et statum in sua persona stabilitum obtinere possit, tamen nihilominus, et hoc non obstan. si propinquior hæres postea

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postea existet, seu ad successionem vocabitur per procreationem infantis ex corpore cujusvis hæredis contravenientis post successionem hæredis remotioris, aut per ullum talem similem casum hæ= redis propinquioris existen., quod tunc, et in tali eventu, non solum persona quæ sic successisset super defectum seti contraventionem prioris hæredis et desuper jus in persona sua stabilavisset, et hæredes qui ad illum vel illam successerint astringentur et obligabuntur selpsos denudare et exuere; ex dict. talliat. terris et statu. ad et in favorem talis propinquioris haeredis, sed etiam jus et titulus personae quae sic successisset, super desectum seur contraventionem, et haeredum qui illi fuccesserint, ipso facto, cadet, et vacuum et nullum et extinctum fiet, quamprimum talis propinquior haeres existet, seu ad successionem vocabitur, virtute substitutionis antea script. et praedict. talliat. terrae et status devolvent, accrescent et pertinebunt tali propinquiori haeredi qui successisset, si ille extiterat, aut si eventus qui vocat talem propinquiorem haeredem ad successionem, tempore defectus seu contraventionis prioris haeredis contigerat, et talis propinquior haeres sie existens aut ad successionem vocatus accessum habebit jus ad praedict. talliat: terras et statum in sua persona stabiliri, eodem modo et via quae utebatur super desectum seu contraventionem prioris haeredis, vel adjudicatione, declaratoria, servitio, vel ullo alio modo aut more, qui legalis et idoneus propter hunc finem judicabitur, ita: ita, ut jus successionis proximo haeredi semper cadet, devolvet et accrescet. secundum substitutionis ordinem praescript. et nunquam ulterius divertetur, quam, ut ipse contraveniens, solus excludatur, et absque praejudicio proximis haeredibus in eorum ordine, reservan. nihilominus personae qui successerit, super desectum seu contraventionem prioris haeredis, totos reditus et proficua dict. talliat. terrarum et status, ad et praeceden. terminum Pentecostes seu Sancti Martini, ante nativitatem talis propinquioris haeredis seu existentiam alterius eventus, qui illum seu illam ad successionem vocat, sed declaran. quod talis propinquior haeres jus ad reditus proventus et proficua habebit perfolvend. ad primum terminum Pentecostes seu Sancti Martiri post ipsius nativitatem, seu existentiam eventus, quo ille seu illa sit proximus haeres; QUÆ UNI-VERSÆ TERRÆ, decimae, piscationes, patronatus, cymba, vectoria aliaque praedict. dict. J M de M haereditarie pertinuerunt, tent. per illum de nobis nostrisque Regiis successoribus immediatis legitimis superioribus earund. eademque virtute procuratoriae refignationis per illum concess. de data decimo oftavo die mentis millefimo resignat et dedit in favorem dict. J M ipsius in vitali reditu, et J M ejus filii legitimi natu maximi, et aliorum talliae haeredum generalium et specialium supra mentionat. in feodo, pure et simpliciter, per fustim et baculum, uti moris est, debite et legitime, per legitimos procuratores ad hunc effec-

tum per dict. I M de M constitut. in manibus dict. Iacobi Montgomery, armigeri, Domini capitalis Baronis, pro seipso et in nomine aliorum Baronum dict. curiae scaccarii, potestatem resignationis accipiendi et desuper nova infeofamenta concedendi, habend, tanquam in manibus noftrum immediatorum legitimorum superiorum earundem, in favorem proque novo infeofamento earund. faciend. et concedend. dict. I M de M in vitali reditu, et J M eius filio legitimo natu maximo, aliisque talliae haeredibus generalibus et specialibus supra nominat. in ordine et cursu successionis supra specificat. in feodo; semper cum et sub diversis oneribus, conditionibus, provisionibus, restrictionibus, limitationibus, clausulis irritan. et resolutivis supra express. sicuti authentica instrumenta super dict. resignatione in manibus Jacobi Forman, notarii publici suscept. latius ferunt. Et pra-TEREA, in ulteriore corroboratione cartae et infeofamenti super his praesentibus sequend. nos, cum avisamento et consensu praedict. DE NOVO DEDISSE, CONCESSISSE, et DISPOSUISSE, prog. nobis nostrifq. Regiis fuccessoribus in perpetuo confirmasse, sicuti nos per praesentes de novodare, concedere, et disponere, et pro nobis nostrisque regiis successoribus pro perpetuo confirmare dicto J M de M in vitali reditu, et dict. J M ejus filio legitimo natu maximo, aliisque talliae haeredibus generalibus et specialibus supra mentionat. in ordine et successionis curlu supra specificat. in feodo, haereditarie et irredimabiliter. N

irredimabiliter, TOTAS ETINTEGRAS-(here certain lands, &c. were enumerated);—AC ETIAM NOS DE NOVODARE, CONCEDERE, et in perpetuum CONFIR-MARE dict. I M. de M in vitali reditu, et dict. I M ejus filio legitimo natu maximo, aliifque talliae haeredibus generalibus et specialibus supra mentionat: in feodo, haereditarie et irredimabiliter, OMNE jus, titulum et interesse, jurisclameum, proprietatem et possessionem, tam petitoriam quam possession, quae nos nostrique regii predecessores et successores habuerunt, habent, seu quovis modo clamare seu praetendere poterint, et integras praedict. terras aliasque, seu ullam partem earundem, seu adreditus, praedia, canas, vectigalia, casualitates, proficua, divoriasque earundem, pro omnibus annis praeteritis ob quamcunque causam praeceden. datam horum praesentium, renuncian, et transferen. eadem, cum omni actione, lite et executione competen. vel quae competere poterit nobis nostrisque regiis successoribus, desuper eadem, in favorem dict. I M de M in vitali reditu, et I M ejus filii legitimi natu maximi aliorumq. talliae haeredum generalium et specialium supra mentionat. in feodo, nunc et in canni tempore futuro, cum qua generalitate, omnibusque allis defectibus, nullitatibus quae contra eadem objici poterint, nos dispensavimus, et pro nobis nostrisque regiis successoribus per praesentes pro perpetuo dispensamus. Er nos ulterius confideran, quod dict. J M de M villam super dict. terras erexit, ut industriam instigaret, instigaret, operaque manufacta favoret, et quod haec bona proposita instigata sint, volumus et cupimus quod dict. villa quemadmodum aedificatur, seu posthac aedificabitur, intus fines limitesque postea specificat. in liberum et non subjectum burgum baroniae erecta esset; 101TUR nos, cum avisamento et consensu praedict., pro nobis nostrisque regiis fuccessoribus, disjungimus et separamus dict. integras terras, decimas, molendinum, terras molendinarias aliaque particulariter antea descript. ab omnibus baroniis et regalitatibus quarum eadem adhuc pars seu partes suerint; ET CREAMUS, jungi. mus, erigimus, annexamus et incorporamus dict. integras terras, decimas, molendinum, terras molendinarias aliaque particulariter antea descript. in unam integram et liberam baroniam, nunc et in omni tempore futuro, nuncupand. Baroniam de M, et damus, concedimus et committimus dict. I M de M in vitali reditu, et dict. I M ejus filio legitimo natu maximo, aliisque talliae haeredibus generalibus speciliabusque supra specificat. in feodo, cum exceptione et reservatione postea script. plenam potestatem, libertatem, privilegium et jurisdictionem liberae baroniae, intus limites dict. terrarum, et particulariter plenam potestatem illi ejusque praedict. eligendi, creandi et constituendi balivos, aliofque officiales baroniae curiae, quibus potestas baroniae curias habendi, erit et talem jurisdictionem, uti per legem competen. exercendi, sed excipien. semper ex baronia per praesentes erect.

territorium postea descript, burgi de M in liberum et non subjectum burgum baroniae in more postea script. super quod potestates, privilegia et jurisdictiones liberae baroniae dict. J M de M ejusque praedict. concess. super alias terras per praesentes disposit. neutiquam extendent. Et nos. cum avisamento et consensu praedict, ereximus, et per praesentes erigimus dict. villam de M in tantum quoad jam aedificat. seu posthag aedificand. super dick terras antea dispositas intus speciales fines limitesque postea descript. viz. intus limites, &c. (here they were described)—quod, per praesentes, declaratur esse territorium burgi baroniae postea mentionat. ultra quod jura jurisdictiones et privilegia super incolas et communitatem ejusd. collata non extendent in unum integrum liberum et non fübjectum burgum baroniae, nunc et in omni tempore futuro Burgum Baroniae de M vocandum, cum omnibus potestatibus, libertatibus, privilegiis et jurisdictionibus quibuscunque ad ullum liberum et non subjectum burgum baroniae pertinen, et spectan, quod in Scotia erectum fuit a data acti Parliamenti in vigesimo anno majestatis ejus Georgii secundi, intitulat. " An act " for taking away and abolishing heritable juris-" dictions in that part of Great Britain called " Scotland." Cum plena potestate et privilegio: ad incolas dict. burgi, suos magistratus et concisiarios eligendi, pro exercitio talis jurifdictionis utiper legem competen, talibus magistratibus, et prodebita

debita et regulari administratione talis communis commodi, uti ad dict. communitatem in omni tempore futuro pertineat et spectet; Et ut administratio et politia dict. Burgi Baroniæ melius regulata effet, per præfentes declaratum est, quod magistratus, ex uno balivo consistet, qui legalem et usitatam jurisdictionem habebit, quod administratio ullius communis commodi, quod ad burgum pertineat ad quatuor conciliarios commissa erit, junctim cum dict. balivo, ullis tribus illorum constituen. lie quorum; cum potestate ad dict. balivum et conciliarios et quorum praedict, talia jura, municipalia et regulationes consisten, cum publica lege regni faciendi, qualia ad stabilimentum et preservationem pacis et commodi et prosperitatis burgi conducere possint, quod omnes incolae intus territorium burgi antea descript. legitimae aetatis, et habend, jus per feudum, seu assedationem centum annorum, ad donum, seu ad tellurem horti, jus burgensium habebunt, et suffragium ferre electionibus jus habebunt, et în officium magistratus seu conciliarii eligi, sed sub sequen. provisionibus, viz. quod nulla persona electionibus suffragium ferre jus habebit aut balivum eligi licet jus haben. uti praedict. qui non est residens burgeusis, quod prima electio in primam diem Mercurii Septembris proximi erit, et quaeque futura electio triennalis erit, in primam diem Mercurii Septembris, hora conventus undecima tempore ante meridiano; ET Nos, cum avisamento et consensu prae-N 3

dict., DAMUS plenam potestatem et libertatem dict. burgo baroniae et administratoribus dict. communitatis tenendi et habendi mercatum hebdomadalem, intus dict. burgum, in diem Iovis, ac etiam habendi quatuor liberas annuas nundinas, in primam diem Jovis, cujusq. trimestris, pro venditione nigrorum boum, equorum, pecorum, panni, mercedis, aliorumque mercium generum super ullam partem territoriae dict. burgi baroniae, incipiendas in primam diem Jovis Octobris proximi, et duran. tres · dies successive; cum potestate ad dict. magistratus et conciliarios et eorum successores in officio, colligendi, exigendi, et intromittendi cum tributis, vectigalibus aliifq. divoriis dict. mercatus hebdomadalis, liberarumq. nundinarum, eademq. ad necessarias impensas, conservandi concordiam et pacem, duran. dict. mercatuum et nundinarum tempore, et vias stratas reparandi, seu aliter, pro beneficio communitatis applicandi. ET ULTERIUS nos, cum avisamento et consensu praedict., volumus et concedimus, proque nobis nostrisq. regiis succesforibus decernimus et ordinamus, quod unica fafina, nunc et in omni tempore futuro per dict J. M. de M. in vitali reditu, et dict. J. M. ejus filium legitimum natu maximum, aliosque haeredes generales et talliae supra specificat. in feodo, apud mansionis locum de M. vel super fundum ullius partis dict. terrarum et baroniae, capienda, per traditionem terrae et lapidis fundi ejusdem solummodo, absque necessitate ullius alii symboli, aeque valida

malida et sufficiens sasina est eritg in omnes intentus et fines, pro integris terris, jure patronatus, cymba, vectoria seu trajectoria, anchoragiis, piscationibus, molendino, decimis, burgo baroniae, aliifque cum pertinen, antea descript, seu pro ulla parte seu partibus earund, ac si particularis sasina super unamquamq, partem et portionem earund. suscepta fuisset, per ordinaria et usitata fymbola, nihilominus dict. terrae aliaque antea specificat. non contigua jaceant, seu in diversis jurisdictionibus, et diversas safinas requirerent, et varia symbola, quocirca, et cum omnibus objectionibus quae contra validitatem seu formalitatem ullarum talium sasinarum fieri possint, nos, cum consensu praedict., pro nobis nostrisque regiis successoribus omnibusque nostris subjectis, per praesentes in perpetuam dispensamus. Tenen. et haben totas et integras dictas terras, patronatum, cymbam, vectoriam seu trajectoriam, piscationes, anchoragias, molendinum, decimas, burgum baroniae, aliaq. cum pertinen. supra script. praedict. J M de M in vitali reditu duran. omnibus diebus fuae vitae, et J M ejus filium legitimum natu maximum, aliosque substitutos haeredes talliae supra mentionat, de nobis nostrisque regiis successoribus immediatis legitimis superioribus earund. in feodo et haereditate in perpetuum, per omnes rectas, metas suas antiquas et divifas, prout jacent in longitudine et latitudine, in domibus, aedificiis, hortis, pomariis, boscis, planis, moris, marefiis, viis, femitis, aquis, stagnis, rivulis, N 4 pratis,

pratis, pascuis et pasturis, molindinis, multuris et corum fequelis, aucupationibus, venationibus, pifcationibus, petariis, turbariis, carbonibus carbonariis, cuniculis cuniculariis, columbis columbariis, fabrilibus brafinis, brueriis genestis, silvis, nemoribus, virgultis lignis tignis, lapicidiis lapide et calce, cum curiis et earum exitibus, haerezeldis, bloodwitis, amerciamentis, cumq. communi pastura, liberog, introitu et exitu, ac cum omnibus et fingulis aliis libertatibus, proficuis, immunitatibus, afiamentis et justis suis pertinen. quibuscung. tam non nominat. quam nominat. tam sub terra quam fupra terram, procul et prope ad praedict. terras aliag, praescript, cum pertinen, spectan, seu juste spectare valen. quomodolibet in futurum, libere, quiete, plenarie, integre, honorifice, bene et in pace, fine ulla revocatione, contradictione, obstaculo seu impedimento aliquali. REDDEN. inde annuatim dict. J M de M et talliae haeredibus fupra mentionat. nobis nostrisque regiis successoribus immediatis legitimis superioribus earund. divorias sequend. viz - (here the duties were specified)-ET haeredibus talliae supra mentionat. et successoribus dict. I M de M, DUPLICAND. respectivas seudifirmae divorias supra mentionat, ad introitum uniuscujusque haeredis, ad terras aliasque supra specificat. quae in feudifirma, uti praedicitur, tenentur secundum morem et consuetudinem in feudifirma tenuris; ET HOC pro omni alio onere, exacti ine, quaestione, demanda seu seculari servitio, quae ex terris aliisque praedict. exigi seu requiri poterit. INSUPER, senescallo nostro senescallatus de et deputatis suis, nec non di-

lectis nostris

et vestrum cuilibet, conjunctim et divisim, senescallis nostris senescallatus de

in hac parte specialiter constitut. falutem; vobis praecipimus et mandamus quatenus praesato I M de M armigero in vitali reditu, et J M ejus filio legitimo natu maximo in feodo. vel eorum certo actornato, latori praesentium, fasinam omnium et fingularum praefat, terrarum baroniae, burgi baroniae, mercatus, nundinarum, decimarum, advocationis, donationis, et juris patronatus, piscationum, molendini, multurarum, stillagium, cymbae, vectoriae, portus vectigalium aliorumque, tam primo quam ultimo et de novo supra disposit. cum omnibus earund. privilegiis, jurisdictionibus, emolumentis et pertinen, jacen, et excipien. ut praefertur, semper cum et sub diversis oneribus, conditionibus, provisionibus, restrictionibus, limitationibus, clausulis irritan. et resolutivis, et reservationibus antea script. secundum formam et tenorem antedict. cartae nostrae, quam de nobis inde habet, et dispensationis praedict, juste haberi faciatis, fine dilatione; Et hoc nullo modo omittatis, ad quod ficiendum, vobis et vestrum cuilibet, conjunctim et divisim, senescallis nostris fenescallatus de in hac parte antedict. committimus potestatem. In cujus REI TESTIMO-NIUM, NIUM, huic praesenti cartae nostrae, sigillum nostrum, per unionis tractatum custodiend. et in Scotia vice et loco magni sigilli ejusdem utend. ordinat. appendi mandavimus; TESTIBUS praedilectis nostris Domino Frederico Campbell nobis abarchivis et registris clerico, Roberto Macqueen de Braxsield armigero nostrae justitiariae clerico, et domino Jacobo St Clair Erskine Baronetto nostrae cancellariae directore; APUD aulam nostram APUD St James's, decimo tertio die mensis Decembris, anno Domini millesimo septingentesimo et nonagesimo primo, regni nostri anno trigesimo secundo.

Written to the Seal and registered the twenty-seventh day of January 1792.

(Signed) THOMAS MILLER, Subt.

Sealed at Edinburgh, the twenty-feventh day of January, one thousand seven hundred and ninety-two years.

(Signed) John Wauchop, Dept.

.. Scots.

Instrument of Sasine following on the preceding: Charter,

In Dei nomine, amen. Per hoc praesens publicum instrumentum cunctis pateat evidentur, et sit notum, quod anno incarnationis Dominicae, millesimo septingentesimo et nonagesimo secundo, men-

as vero Augusti die decimo tertio, regnique serenissimi Domini nostri Georgii tertii, Dei gratia, Magnae Britanniae, Franciae, et Hiberniae, Regis, Fideique Defensoris, anno trigesimo secundo, in mei notarii publici et testium subscribentium praesentia, personaliter comparuit, apud maneriei locum de M. super fundum terrarum et baroniae postea mentionat. tanquam partem et locum sufficien. pro capienda fafinam, pro integris terris, jure patronatus, cymba, vectoria seu trajectoria, anchoragiis, piscationibus, molendino, decimis, burgo baroniae, aliisque cum pertinen. subscript. virtute clausulae dispensationis postea mentionat. in carta postea recitat. content. J. K. servitor praedii apud M. tanguam procurator et actornatus pro ac in nomine J. M. de M. armigeri, et J. M. ejus filii legitimi natus maximi, specialiter constitutus, cujus procuratoriae potestas mihi notario publico subscribenti lucide constabat, et ibidem, etiam et perfonaliter, nobiscum accessit, discretus vir G. S. hortularius apud M. ut vicecomes in hac parte senescallatus de per praeceptum safinae sub insert. specialiter constitut. Er dict. actornatus HABENS et in suis manibus TENENS quandam cartam refignationis et novodamus, sub sigillo per unionis tractatum custodiend. et in Scotia vice et lòco magni figilli ejusdem utend. or-'dinat. de data infra script. et praeceptum sasinae sub insertum in se continen.; per quam cartam dict. S. D. N. rex, cum confensu dominorum baronum

ronum sui scaccarii in Scotia, DEDIT, CONCESSIT, et disposuit, ac pro se suisque regiis successoribus in perpetuum confirmavit, dict. J. M. de M. in vitali reditu, et dict. J. M. ejus filio legitimo natu maximo, et haeredibus masculis ex ejus corpore, QUIBUS DEFICIEN. haeredibus fæmellis ex ejus corpore, QUIBUS DEFICIEN. J. M. ejus filio legitimo natu secundo et haeredibus masculis ex ejus corpore, QUIBUS DEFICIEN. haeredibus fœmellis ex ejus corpore, &c.—(here the whole destination was inserted)—omnes et singulas—(here the lands were specially described as in the charter) - SEMPER cum et sub diversis oneribus, conditionibus, provisionibus, restrictionibus, limitationibus, clausulis irritan, et resolut. reservationibus aliisque content. in literis dispositionis talliae, lie deed of Entail, de data vigesimo nono die mensis Decembris, anno Domin' millesimo septingentesimo et sexagesimo secundo, et registrat. in archivo talliarum de data decimo tertio die mensis Januarii, anno millesimo septingentesimo et sexagesimo tertio, et postez fcript. quarum omnes in resignationis instrumento, cartis, et sasinae instrumentis super dict. cartam fequend, et in omnibus subsequen. servitiis, retornatibus, procuratoriis, et in refignationis instrumentis, cartis, praeceptis, et instrumentis sasinae, et in omnilus aliis juribus et transmissionibus dict. terrarum aliorumque praescript, per dict. cartam verbatim inseri statuuntur; videlicet, cum et sub hoc onere, ficuti per dict. cartam expresse pactatur et providetur, quod si, &c.—(here the conditions of the entail were verbatim inserted)-ET PRÆTE-REA, in ulteriore corroboratione praedict. cartae, dicl. S. D. N. rex, cum avisamento et consensu praedict., de novo DEDIT, CONCESSIT, et DISPOsuit, proque seipso ejusque regiis successoribus pro perpetuo confirmavit dict. J. M. in vitali reditu, et dict. I. M. ejus filio legitimo natu maximo, aliisque talliae haeredibus generalibus specialibusque supra mentionat, in ordine et successionis cursu supra specificat. in feodo, haereditarie et irredimabiliter, totas et integras dict. septem mercat. terrarum, &c.—(here the lands were described)— BT SEMPER cum et sub diversis oneribus, conditionibus, provisionibus, restrictionibus, limitationibus, clausulis irritan, et resolut, aliisque reservationibus in dict. carta et antea script. AC ETIAM dict. S. D. N. rex DE NOVO DEDIT, CONCESSIT, et in perpetuum confirmavit dict. J. M. de M. in vitali reditu, et dict. J. M. eius filio legitimo natu maximo, aliifque talhae haeredibus generalibus et specialibus supra mentionat, in feodo, haereditarie et irredimabiliter, omne jus, titulum etinteresse, jurisclamium, proprietatem et possesfionem, tam petitoriam quam possessoriam, quae dict. S. D. N. rex, eins regii predecessores habuerunt, habent, seu quovis modo clamare seus praetendere poterint, ad integras praedict, terras aliafque, seu ullam partem earund. seu ad reditus, praedia, canas, vectigalia, casualitates, proficua, divoriasque earund. pro omnibus annis praeteritis, ob quamcunque

quamcunque causam preceden. datam diet. cartae : Renuncian. et Transferen. eadem, cum omni actione, lite et executione competen, vel quae competen. poterit dict. S. D. N. regi ejusque regiis. fuccessoribus, desuper easdem, in favorem dict. J. M. de M. in vitali reditu, et J. M. ejus filii legitimi natu maximi, aliorumo, talliae haeredum generalium et specialium supra mentionat, in seodo, in omni tempore futuro; cum qua generalitate, et omnibus aliis defectibus nullitatibusque quae contra eadem objici poterint, dict. S. D. N. rex, pro seipso regiisque successoribus, per dict. cartam pro perpetuo DISPENSAVIT; ET dict. S. D. N. rex, ulterius consideran. quod dict. J. M. de M. villam fuper dict. terras erexit, ut industriam instigaret, operaque manufacta faveret, et quod haec bona proposita instigata essent, voluit et cupitt quod dict. villa, quemadmodum aedificatur, seu posthac aedificabitur, intus fines limitesque postea specificat. in liberum et non subjectum burgum baroniae erecta effet, igitur dict. S. D. N. rex, cum avisamento et consensu praedict., pro seipso ejusque regiis successoribus, disjunxit et separavit dict. integras terras, decimas, molendinum, terras molendinarias aliaque particulariter antea descript. ab omnibus baroniis et regalitatibus quarum eadem' adhuc pars seu partes suerunt, ET CREAVIT, JUN-XIT, EREXIT, ANNEXAVIT, ET INCORPORAVIT dict. integras terras, decimas, molendinum, terras molendinarias aliaque particulariter descript. in uham integram et liberam Baroniam in omni tempore futuro, nuncupat. Baroniam de M.; ET DE-DIT. CONCESSIT et COMMITTIT dict. J. M. de M. in vitali reditu, et dict. J. M. ejus filio legitimo natu maximo, aliisque talliae haeredibus generalibus specialibusque supra specificat. in feodo, cum exceptione et reservatione postea script. plenam potestatem, libertatem, privilegium et jurisdictionem, liberae Baroniae, intus limites dict. terrarum, et particulariter, plenam potestatem illi ejusque praedict. eligendi, creandi et constituendi Balivos aliosque officiales Baroniae curiae, quibus potestas Baroniae curias habendi erit, et talem jurisdictionem uti pet legem competen. exercendi; sed excipien. semper ex baronia per dict. cartam erect. territoriam postea descript. Burgi de In liberum et non subjectum Burgum Baroniae in more postea descript. super quod potestates, privilegia et jurisdictiones liberae Baroniae, dict. J. M. de M. ejusque praedict. concess. super alias terras per dict. cartam disposita neutiquam extendent, ET dict. S. D. N. rex, cum avisamento et consensu praedict., per dict. cartam EREXIT dict. villam de

in tantum deinde aedificat. seu postea aedificand., super dict. terras intus speciales sines limitesque postea descript. videlicet—(here the boundaries were specified)—quod per dict. cartam declaratur esse territorium Burgi Baroniae postea mentionat. ultra quod jura, jurisdictiones et privilegia super incolas et communitatem ejusd. collata non exten-

dent

dent in unum integrum liberum et non subjectum Burgum Baroniae, in omni tempore futuro Burgum Baroniae de vocand., cum omnibus poteftatibus, libertatibus, privilegiis et jurisdictionibus quibuscunque, ad ullum liberum et non subjectum Burgum Baroniae pertinen, et spectan, quod in Scotia erectum fuit, a data acri Parliamenti in vigesimo anno majestatis ejus Georgii Secundi, intitulat. 6 An act for taking away and abolishing the heritable jurisdictions in that part of Great Britain called Scotland; 'cum plena potestate et privilegio ad incolas dict. Burgi fuos magistratus et conciliarios eligendi, pro exercitio talis jurisdictionis, uti per legem competen, talibus magistratibus, et pro debita et regulari administratione talis communis commodi, uti ad dict. communitatem in omni tempore futuro pertineat et spectet, et ut administratio et politia dict. Burgi Baroniae melius regulata esset, per dict. cartam declaratum est, quod magistratus ex uno Balivo consistet, qui legalem et usitatem jurisdictionem habebit, quod administratio ullius communis commodi quod ad Burgum pertineat, ad quatuor conciliarios commissa erit, junctim cum dict. balivo, ullis tribus eorum constituen. lie quorum; cum potestate ad dict. balivum et conciliarios, et quorum praedict. talia jura, municipalia, et regulationes, consistentes cum publica lege regni, faciendi, qualia ad stabilamentum et preservationem pacis, et commodi et prosperitatis Burgi, conducere possint, quod omnes incolae intus territorium

territorium Burgi antea descript. legitimae aetatis, et haben, jus per feudum, seu assedationem centum annorum, ad domum, seu ad tellurem hortis jus burgenfium habebunt, et suffragium ferre electionibus jus habebunt, et in officium magistratus seu conciliarii eligi, sed sub sequen. provisionibus, videlicet, quod nulla perfona electionibus suffragium ferre jus habebit, aut balivum eligi licet, jus haben, uti praedict, qui non est resident burgensis; quod prima electio in primum diem, &c.—(precisely as in the charter)-ET ULTERIUS, dict. S. D. N. Rex, cum avisamento et consensu praedict., per dict. cartam, voluit et concessit, proque illo eiufa. Regiis fuccefforibus DEGREVIT et ORDINAJ vir, quod unica fasina, deinde et in omni tempore futuro, per dict. J M de M in vitali reditu, et dict. I M ejus filium legitimum natu maximum, aliosque haeredes generales et talliae supra specific cat. in feodo, apud mansionis locum de M, vel super fundum ultius partis dict. terrarum et Baroniae capienda, per traditionem terrae et lapidis fundi ejusd. solummodo, absque necessitate ullius alti symboli, aeque valida et sufficient sasma est eritque, in omnes intentus et fines, pro integris terris, jure patronatus, cymba, vectoria seu trajectoria, anchoragiis, piscationibus, molendino, decimis, Burgo Baroniae, aliisque cum pertinen, antea descript, seu pro ulla parte seu partibus earund, ae si particularis sasina super unamquamque partem et portionem earund, suscepta suisset, per ordinaria et VOL. V.

usitata symbola, nihilominus dict. terrae aliaque antea descript, non contiguae jacent, seu in diversisjurisdictionibus, et diversas sasinas, et varia symbola, requirerent, quocirca et cum omnibus objectionibus quae contra validitatem seu formalitatem ullarum talium fasinarum fieri possint, diet. S. D. N. Rex, cum confensu praedict., pro illo ejusque Regiis successoribus, omnibusque subjectis ejus, per dict. cartam, in perpetuum dispensavit, uti dict. carta continen. praeceptum safinae sub infert. diverfaque alias claufulas latius proportat. Tenen. co HABEN. totas et integras dict. terras, jus patronatus, cymbam, vectoriam seu trajectoriam, piscationes, anchoragias, molendinum, decimas, Burgum Baroniae, aliaque cum pertinen, praescriptper dict. I M de M in vitali reditu, duran, omnibus diebus suae vitae, et diet. I M ejus fillum legitimum natu maximum, aliofque substitutos haeredes talliae supra mentionate de dict. S. D. N. Rege ejusque Regiis successoribus in feodo et haereditate in perpetuum, modo in dict. cartam ad longum numerat. QUAMQUIDEM CARTAM dictactornatus exhibuit et praesentavit dict. vicecomiti vel fenescallo in hac parte, uti praesertur, legitime constituto, cumque rogavit ut officium per dict. fasinae preceptum sibi commissum debite praestaret; quemque rogatum dict. vicecomes percipiens esse justum rationique confonant dietcartam in manibus fuis recepit, et mihi notariopublico subscribenti perlegend. et in vulgari ser-

mone testibus adstantibus explicand. tradidit. quod feci; et cujus praecepti sasinae content. in dict. carta, tenor sequitur, et est talis—(heré the precept of sasine was verbatim copied with the attestation of the sealing, &c. as at the bottom of the crown charter)-Post cujus cartae antea recitat. et praecepti fasinae supra insert. inibi content. PER-LECTIONEM, publicationem, et in vulgari sermone testibus adstantibus explicationem, praefatus vicecomes, virtute dict. cartae praeceptique sasinae inibi content. et officii per idem sibi commissi, statum et fasinam haereditariam, in vitali reditu, et in feodo, pariterque possessionem, actualem, realem et corporalem, praefato J M de M in vitali reditu, et dict. J M ejus filio legitimo natu maximo in feodo, omnium et singularum praedict. terrarum, Baroniae, Burgi Baroniae, mercatus, nundinarum, decimarum, advocationis, donationis, et juris patronatus, piscationum, molendini, multurarum, stillagium, cymbae, vectoriae portus vectigalium, aliorumque, tam primo quam ultimo, et de novo disposit, per dich. cartam supra recitat cum omnibus earund. privilegiis, jurisdictionibus, emolumentis et pertinen. jacen. et excipien. ut praesertur, semper cum et sub diversis oneribus, conditionibus, provisionibus, restrictionibus, limitationibus, clausulis irritan. et resolutivis, et reservationibus antea script. PER TRADITIONEM terrae et lapidis fundi dict. terrarum aliorumque, in manibus dict. actornati, pro et in nomine dict. J M de M, et dict. J M ejus 0 2 filii

filii legitimi natu maximi, BRDIT, TRADIDIT, pariterque DELIVERAVIT, fecundum formam et te-norem antedict. cartae, et praecepti sasnae supra infert. in omnibus; super quibus omnibus et singulis praemissis, praesatus actornatus a me notario publico subscribente instrumentum sibi sieri petiit; acta erant hæc apud maneriei locum de M, virtute clausulae dispensationis in dict. carta mentionat. horas inter, &c. die mensis, anno Domini, Regniq. S. D. N. supra specificat. Præsentibus, &c.—in common form.

This fafine, when recorded, completes the title of the institute in the entail, and makes him hold of the Crown.

## II. WHERE THE LANDS HOLD OF A SUBJECT SUPERIOR.

The form of completing the entail, where the lands hold of a subject superior, differs very little from that where the lands hold of the Crown, further than what arises from the peculiarities attending the Crown charter; that is to say, it is by a charter of confirmation that the entail is completed where infestment has been taken on the original entail, or by a charter of resignation and sasine where no infestment has followed on the entail; and the only material alteration consists in the provision which

which the subject superior deems it prudent to insert in his charters for completing an entail, in order to preserve his right to a year's rest for the entry of an heir who is not the heir of line of the person last insert. With this preliminary observation, I proceed to the forms of the charters of confirmation and resignation by a subject superior.

 Charter of Confirmation of an Entail, and Instrument of Sasine following thereon, granted by a Subject Superior.

KNOW ALL MEN by these presents, that I, M, Esq. of M, immediate lawful superior of the lands and others underwritten, in consideration of a certain sum of money paid to me by B, whereof I acknowledge the receipt, have RATIFIED and APPROVED, as I hereby RATIFY and APPROVE, and for me and my heirs and successors, perpetually confirm, a disposition and deed of entail, made and executed by A, of date, whereby, for the causes there-

in specified, BUT ALWAYS WITH and UNDER the burdens, provisions, conditions, and declarations, and clauses probabitory, irritant, and resolutive, therein and after expressed, he GAVE, GRANTED, and DISPONED to and in favour of the said B, his son, and the heirs male of his body; WHOM FAIL-

ING, to C his fecond fon, and the heirs male of his body, &c.—(here the substitution will be copied in) -ALL and WHOLE—(here the lands will be described) - BUT ALWAYS with and under the provifions, declarations, conditions, burdens, limitations, and clauses prohibitory, irritant, and resolutive, therein and after mentioned, viz. WITH and under the condition always, as it is thereby expressly provided and declared, that the faid B, and the whole heirs thereby called to the succesfion of the faid lands and others, shall be bound and obliged, upon the fuccession opening to them respectively, in virtue of the said entail, to assume, use, and bear the surname of A, and the arms and defignation, &c .- (here the whole conditions of the entail will be inserted) - WITH and UN-DER all which burdens, conditions, provisions, and declarations, and clauses prohibitory, irritant, and resolutive above mentioned, the said disposition and deed of entail is expressly made and granted, and no otherways, as the faid disposition and deed of entail containing an obligation to infeft the said B and the heirs of entail thereby substituted to him, a se vel de se, BUT ALWAYS with and under the conditions, provisions, restrictions, limitations, clauses prohibitory, irritant, and resolutive, therein and before mentioned, together also with a precept of fasine applicable thereto, and other usual and necessary clauses, in itself more fully bears; together with an instrument of SASINE

SASINE of the lands and others above described. raken in favour of the faid B in virtue of the Said precept of sasine contained in the said deed of tailzie, dated and recorded in the register of fasines, the dav or of whatever other dates. tenor, or contents, the faid writings may be, AND THAT in the whole heads, articles, claufes, tenor, and contents of the same, with all that has or is competent to follow thereupon: AND FURTHER, I hereby will and GRANT, and for myself and my heirs and successors, DECERN and ORDAIN, that this present confirmation shall be as valid and effectual, to all intents and purposes, as if the writs before confirmed had been engrossed herein, or as if this confirmation had been made before the taking of the faid infeftment; WHERE-WITH, and with all objections that may lye against the validity of the faid deeds, or of this confirmation, I, for myself and my foresaids, have for ever dispensed; TO BE MELD the lands and others before described by the said B and those substituted to him in manner foresaid, of and under me, my heirs and fuccosfors, immediate lawful fuperiors thereof, but under the burdens, conditions, limitations, claufes prohibitory, irritant, and refolutive above expressed, in feu farm, fee and heritage, for ever; giving therefor, yearly, the faid B and his foresaids, to me and my foresaids, immediate Lawful superiors of the same, the sum of &c.

in name of feu farm duty, at two terms in the year. Whitsunday and Martinmas, by equal portions, AND DOUBLING the faid feu duty, the first year's entry of each heir of line of the faid B entitled to enter heir in the faid lands under the faid entail: AND THAT for all other burden, exaction, demand, or secular service whatever—(it will be observed, that these clauses will be regulated in every particular by the clauses in the original few right, with which they will be made to correspond verbatim)—SAVING and RESERVING the bygone and current feu duties of the faid lands, in so far as the same are not paid; AND DECLARING ALWAYS, as it is hereby expressly PROVIDED and DE-ELARED, that by granting this charter of confirmation of the said disposition, and deed of entail, and of the instrument of sasine following thereon, I shall not be understood to have renounced or given up. any right to demand the relief duties payable by 2 fingular successor from those heirs of entail who are not heirs of line of the person last infeft in the said estate; this CHARTER OF CONFIRMATION being expressly GRANTED by me, and ACCEPTED of by the faid B, and to be FOUNDED on by those who may fucceed to him under the faid entail, UNDER this condition, that every right competent to me, as fuperior of the faid lands, before granting hereof, is secured and reserved to me, in the same manner, and as fully, as if this had been a charter of confirmation of a disposition to the said B, his his heirs and affignees whomsoever, and, in particular, the right of demanding from those heirs of entail who are not heirs of line of the person last insect, the relief duty due by a singular successor in the said lands; RESERVING ALSO, on the other hand, to the said B, or those succeeding to him under the said entail, every plea competent to them, by which they may be entitled to force an entry from me or my foresaids for the relief duty of an heir; AND FURTHER, saying my other rights and the rights of all others. AND I consent to the REGISTRATION hereof in the books of Council and Session, therein to remain for preservation; and for that purpose, constitute

my procurators, &c.

In witness whereof, &c.

This charter of confirmation will complete the entail, and make the person insert on the entail hold of the superior. I shall next give an example of the charter of resignation.

2. Charter of Resignation by a Subject Superior to an heir of Entail.

Know all men, by these presents, that I, M, Esq. of M, immediate lawful superior of the lands and others underwritten, in consideration of a certain sum of money, in name of composition

tion paid to me by B, HAVE GIVEN, GRANTED. and DISPONED, as I hereby, under the conditions. burdens, provisions and declarations, and clauses prohibitory, irritant, and resolutive, after expresfed, GIVE, GRANT, and DISPONE, and for me, my heirs and fucceffors, perpetually CONFIRM, to and in favour of B and the heirs male of his body; WHOM FAILING —(here the substitution will be verbatiminserted from the entail)—ALL AND WHOLE— (here the lands will in like manner be fully transcribed from the entail)-BUT ALWAYS with and under the feveral burdens, conditions, provisions, restrictions, limitations, clauses prohibitory, irritant, and resolutive, and declarations herein particularly after expressed, viz.—(here the conditions of the entail will be verbatim engrossed)—which LANDS and others pertained heritably of before to A, and were held by him of me as immediate lawful superior thereof, AND WERE, by DISPOSITION and DEED of ENTAIL, dated , conveyed by the said A to the said B and the heirs of entail substituted to him in manner foresaid, with and under the feveral conditions, provisions, restrictions, limitations, clauses irritant and resolutive, and declarations herein before inferted, AND were, in virtue of a procuratory of relignation therein contained, with all right, title and interest competent to the said A, duly and lawfully RESIGNED, by the lawful procurators of the faid A, specially constituted to that effect, in my hands.

hands, as immediate lawful fuperior thereof, purely and fimply, by staff and baton, as use is, in FAVOUR and for new infeftment of the same to be made and granted to the faid B and the heirs male of his body; WHOM FAILING—(here the destination is repeated)—BUT ALWAYS with and under the conditions, provisions, restrictions, limitations, clauses prohibitory, irritant, and resolutive, and declarations herein before engroffed, and that in due and competent form, as authentic instruments taken upon the faid refignation in the hands of notary-public, of the date hereof, more fully bears; TO BE HELD the faid lands and others above described by the faid B, and the other heirs of entail substituted to him in manner foresaid, of and under me, and my heirs and successors in the said estate of ; but under the conditions, limitations, restrictions, clauses prohibitory, irritant, and resolutive, and declarations foresaid, in FRU FARM, fee and heritage for ever, by all the righteous meiths and marches thereof, as the fame lve in length and in breadth, with free ish and entry thereto, and all and fundry parts, pendicles, and pertinents thereof, freely and quietly, without any impediment or obstacle whatever; GIVING therefor, yearly, the faid B and his foresaids, to me and my foresaids, the sum of Sterling of FEU DUTY, at two terms in the year, Whit-

funday and Martinmas, by equal portions, AND

DOUBLING

DOUBLING the said feu duty the first year of the entry of each heir of line of the faid B entitled to enter heir in the faid lands and others under the faid entail, AND THESE for all other exaction, demand, or fecular fervice which can any way be asked or required forth of the said lands in all time coming; BUT DECLARING ALWAYS, as it is hereby expressly provided and declared, that by granting this charter, containing therein the destination and conditions of the faid entail, I am not to be understood as having given up or renounced any rights of superiority competent to me before granting hereof; and, in particular, my right to demand the relief duties payable by a fingular fuccessor from the heirs of entail who are not heirs of line of the person last infest in the faid lands and others; THIS CHARTER being expressly granted by me, and accepted of by the faid B, and to be founded on by every future heir of entail, ONLY UNDER THIS CONDITION, that every right competent to me, my heirs and successors, as superior of the said lands, before granting hereof, is secured and reserved to me and them, in the same manner, and as fully, as if the above destination and conditions had not been herein expressed; and, in particular, the right of demanding from those heirs under the foregoing destination, who are not heirs of line of the person last infeft in the said lands and others, the relief duty due by a fingular fuccessor in the said lands;

the faid B, and those succeeding under the faid destination, every plea competent to them, not founded on the present charter, by which they may be entitled to force an entry from me and my foresaids for the relief duty of an heir; and I consent to the registration hereof in the books of Council and Session, therein to remain for preservation, and thereto constitute

PROCURATORS, &c. And FURTHER, I hereby defire and require you

, jointly and feverally, my bailies In that part hereby specially constituted, THAT OR fight hereof, ye give and DELIVER to the faid B, or to those substituted to him in manner foresaid. BUT ALWAYS under the conditions, provisions, limitations and reftrictions, clauses prohibitory, irritant and resolutive, and declarations above inferted, heritable state and sasine, real, actual and corporal possession of all and whole the lands and others forefaid, lying and described in manner above expressed, and here held as repeated a AND THAT by delivering to the faid B, or to the heirs of entail above described, or to his or their certain attorney or attorneys, in his or their names, bearers hereof, of earth and stone of the ground of the faid lands and others, with all other fymbols usual and necessary; BUT SAVING ALWAYS and RESERVING to me the bygone feu-duties, in

fo far as they have not been paid, AND SAVING ALSO my rights and the rights of all others; AND THIS in noways ye leave undone; WHICH TO DO, I commit to you, jointly and feverally, my full power, by this my precept of fafine, directed to you for that effect. In WITNESS WHEREOF, &c.

This charter is completed by infeftment, which will differ very little from the fafine on the entail.

Sasine on the Charter of Resignation proceeding on the Procuratory contained in a Deed of Entail.

IN THE NAME OF GOD, AMEN, &c.—(in common form)—HAVING AND HOLDING in his hands a charter of refignation made and granted by M, Esq. of M, of the date under written, and containing therein the precept of sasine after inferted; by which charter the said M, under the conditions, burdens, provisions, and declarations, and clauses irritant and resolutive, and declarations herein after expressed, GAVE, GRANTED, and DISPONED to and in favour of the said B and the heirs male of his body; whom fall-ino—(here the destination is engrossed)—heritably and irredeemably, ALL AND WHOLE—(here the

the lands are described as in the dispositive clause of the charter)-BUT ALWAYS with and under the feveral burdens, conditions, provisions, restrictions, limitations, clauses prohibitory, irritant and resolutive, and declarations herein particularly after expressed, viz. WITH and UNDER the CONDITION ALWAYS, &c .- (here the whole conditions of the entail will be verbatim inserted)-WHICH CHARTER OF RESIGNATION, containing the faid precept of fafine, the faid attorney prefented to the said bailie, and defired him to proceed to the execution of the office of bailiary thereby committed to him, by giving fafine to the faid B of the lands and others above mentioned, in terms of the faid charter and precept of fafine therein contained; WHICH DESIRE, the faid bailie finding to be reasonable, he received the faid charter into his hands, and delivered the fame to me notary-public subscribing, to be published to the witnesses present, which I did accordingly; and of which precept of fafine therein contained, the tenor follows in these words-(here the precept of sasine and testing clause are inserted)-After reading and publishing of which charter of refignation, and precept of fafine therein contained and above inferted, the faid bailie, in virtue thereof, and of the office of bailiary thereby committed to him, GAVE and DELIVERED heritable state and fasine, actual, realand corporal possession to the said B of ALL AND .. whole the lands and others above written, lying and described in manner foresaid, but with and under the burdens, provisions, conditions, limitations, clauses prohibitory, irritant, and resolutive, and declarations above expressed; under all and each of which, this infestment is given, and to be received by the said B, and not otherways; and that by delivering, &c. &c. (in common form.)

In one or other of these ways will the entail be completed, as the lands happen to be held of the Crown or of a subject superior. And in order to bring into view all that relates to the constitution of the entail, I shall give an example of the trust deed, which is found expedient in certain situations for accomplishing the views of the entailer.

## Sect. V. Of Deeds relative to Entails.

THE proprietor of an estate burdened with debts, may chuse to entail that estate; but as his debts will be effectual against the estate, and may be the means of overturning the entail, it is necessary that he should provide for the

the liquidation of these debts: And were hear with that view, to empower the heir of entail to dispose of the estate, or even part of the estate, there would be much danger of entirely frustrating his object; therefore, the arrangements necessary for paying off the debts of the entailer will be put under the charge of a truffee accountable to the heirs of entail. trust deed may also be requisite where a perfon is possessed of funds that require to be collected before a purchase can be made: Or a person may have his property scattered, and may wish to dispose of what is more detached, and to purchase lands contiguous to his principal property; here, too, the aid of a trust will be required: In short, many situations will occur, where the trust deed becomes necessary, and the powers conferred on the trustee, as well as the purpoles of the trust, must vary with the circumstances of the case. I shall give examples of the deed, and of the changes which the entail necessarily undergoes, when it comes to be executed by truftees, in obedience to the directions of a truft.

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- t. Trust Deed conveying an Entailed Estate to Trustees to enable them to pay off the Debts of the Entailer.
- I, A, considering that I have, of this date, executed an entail of my estate of A, and that it is incumbent on me to provide for the payment of fach debts as I am now due, or may be due, at the time of my death, and having full confidence in the persons after named. I therefore GIVE. GRANT and DISPONE to and in favour of M, N, O, and P, and to such other person or persons as I shall hereafter appoint to be trustees alongst with them, and to such persons as they shall assume by virtue of the powers herein after committed to them, and to the furvivor or furvivors of them, the major part alive, and accepting at the time, being always a quorum, as trustees for the purpose after mentioned, and to the assignees of the said trustees, heritably and irredeemably, ALL and WHOLE—(here the lands are described) -- AS ALSO, ALL and SUNDRY other lands and heritages, and all debts and fums of money, heritable and moveable, arrears of rent, bank stock, household furniture, goods and gear, and whole efface and effects which shall belong and be owing to me at the time of my death whereever the same may be situated, together with the whole

whole vouchers and instructions thereof, with the writs and title-deeds of the lands and other heritable subjects hereby disponed; AND PARTICU-LARLY without prejudice to the generality forefaid, the effects and fums of money which shall be enumerated in any inventory to be figned by me as relative to these presents, which shall be as valid to exclude the necessity of confirmation as if every particular were herein inferted; BUT in TRUST ALWAYS, and for the uses and purpofes, and under the conditions herein expressed, viz. that the faid trustees, or their quorum, shall, immediately after my death, enter into possession of the faid lands and others before disponed, remove tenants, and fet tacks thereof for any period not exceeding 19 years; and that they or their faid quorum shall intromit with, sell, and dispose of my whole personal estate, either by public roup or private bargain; and, if necessary, shall fell the whole or any part of the faid teinds and others by public roup, after due intimation thereof in the Edinburgh newspapers for three months previous to the fale, and shall grant dispositions thereof to the purchasers, containing all the usual and necessary clauses, and declaring, that the purchaser or purchasers shall have no concern with the application of the price, or the conditions hereof; and my faid trustees shall sue for payment of the debts, heritable and moveable, which shall be due to me at

the time of my death, and, on payment, shall grant discharges or conveyances thereof, which are hereby declared sufficient to the receivers. and that for the purposes following, viz. Ist, for payment of all the just and lawful debts presently due and owing by me, or which fhall be due and owing by me at the time of my death, with my deathbed and funeral expenses; 2d, for parment of the expense attending the execution of this trust; ad, for payment of such legacies as I shall give or bequeath at any time in my life; 4th, for payment to B, the institute in the said entail, and, failing him, to those thereby substituted to him, in the order thereby prescribed, Sterling, at two terms in an annuity of the year, Whitfunday and Martinmas, by equal portions, during all the days of their lives, or until the trust hereby created shall cease and determine in manner after mentioned, beginning the first term's payment of the said annuity at the first term of Whitsunday or Martinmas that shall happen next after my death, and continuing the payment thereof at each of the faid terms during the period foresaid; BUT under this condition, that in case, during the continuance of this trust, the person entitled to the said annuity shall be under age, it shall be in the power of my said trustees, during the minority of such person, to restrict the said annuity to such sum, as, either by itself, or joined with the annual produce of any

any other property belonging to the faid person, my faid trustees shall deem sufficient for the aliment and education of the said heir: As Also, it shall be in the power of my faid trustees to permit the faid B, or the heirs substituted to him in the faid entail, to possess the manor place, offices and gardens of A, with any part of the ground adjoining thereto, in the option of the faid B or his forefaids, not exceeding in whole the number acres, of Scotch measure, rent free, ~of but that only for such space as my faid trustees Thall think fit; DECLARING that if my faid lands shall not be fold or disposed of by my faid trustees, this trust shall subsist until my whole debts of every kind, legacies and expenses of management, are extinguished and paid; and if, at that period, the heir entitled to fucceed to my lands and estate, in terms of the deed of entail beforementioned, shall be under age, the trust is to subfift until he or any minor heir or heirs who may fucceed to him shall have attained to majority; BUT DECLARING, that in case the heir entitled to fucceed to my estate, in virtue of the said deed of entail, shall be minor at the time when the whole debts due by me shall be extinguished and paid, it shall be in the power of my trustees, if they judge it proper or expedient, to pay fuch heir, from the time of the extinction of all my debts till his attaining majority, an annuity not exceedtowards his aliment and education; ang

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and, upon the extinction of my whole debts as · aforefaid, and fuch heir attaining majority, my trustees are to denude of these presents, and to put him in possession of my estate, and to account for and pay over to him the clear balance in their hands, after payment of my debts, and fulfilling the whole other purposes of this trust; DECLAR-ING, that if, during the subsistence of the trust, or prior to my trustees entering on the execution of their office, the said B, or the heir in possession for the time, shall marry, it shall be in the power of my faid trustees to provide and secure the widows of the faid B or other heir, in an annuity not ex-Sterling, payable out of my ceeding estate and effects hereby conveyed; and in case it shall be necessary for my said trustees to sell and dispose of my whole lands and estate, or any part thereof, and that they shall accordingly make fuch fales in manner before directed, I hereby appoint them, as foon as conveniently can be done, to pay off all my debts and legacies, and the expenses of management, and to lay out the clear balance remaining of the produce of such fales as may have been made in the purchase of lands, and to fettle, entail, and fecure the same on the same series of heirs, and under the same conditions, limitations, and clauses irritant and resolutive, as are contained in the entail executed by me of this date; AND when, in either of these ways, the purposes of this trust shall be fully anfwered,

Iwered, my faid trustees are to divest themselves of my estate, funds and effects, and to renounce the rights standing in their persons, in favour of the heir appointed to fucceed to my faid lands and estate, by the deed of entail before-mentioned, and with and under the whole conditions, limitations, and clauses irritant and resolutive therein expressed, provided such heir be major at the time: AND FURTHER, for the encouragement of my faid trustees, to accept of the trust hereby committed to them, I hereby DECLARE, that they shall not be liable for neglect, omissions, or diligence of any kind, nor shall they be liable singuli in solidum, but each only for his own personal intromissions, and they shall be no further liable for any factors to be appointed by them (which they are hereby authorifed to do), than that they are habite and repute responsible at the time of their entering on their office; as also, that the faid trustees shall be at liberty, and have full power on all necessary occasions, in the execution of their present trust, to bind me and my heirs, and all others concerned, in clauses of absolute warrandice in favour of debtors, or of purchasers of any part of the faid trust estate, but which purchasers or debtors shall be noways concerned with the application of any fums of money to be paid by them, or with any of the conditions or provisions herein contained, but shall be fufficiently exonered by the simple discharge of the

faid trustees, or quorum thereof: AND FURTHER, I hereby give full power to my faid trustees or their quorum, or to the furvivor, to add and affume fuch other person or persons, one or more, as they shall think fit, to be trustees for the better management of the premifes; which trustees so to be named and assumed, shall have the same powers as if they had been named and appointed by myfelf, and shall only each be liable for his own intromissions, and noways for negligence or omissions of any kind: AND LASTLY, for carrying these presents more effectually into execution, I hereby NOMINATE and APPOINT my faid trustees, for the uses and purposes foresaid, to be my sole and only intromitters and executors with my goods and gear, with power to them to give up inventories of my effects, and to confirm my testament, if needful; IN WHICH LANDS and others forefaid, I BIND and OBLIGE me, my heirs and fucceffors, duly and validly to INFEFT and SEISE my faid trustees, disponees, and the survivors or survivor of them, or their foresaids; BUT in TRUST ALWAYS for the uses and purposes foresaid, and that by two infestments and manners of holding, the one to be held of and under me and my foresaids, in free blench, for payment of a penny Scots money on the ground of the faid lands, at Whitfunday yearly, if asked only, and relieving me and my foresaids of the duties and fervices payable to our superiors thereof, in the fame manner, and as freely as I hold

hold or may hold the same myself, and that either by resignation or confirmation, or both, the one without prejudice to the other; And, for completing the said insestment by resignation, I hereby MAKE and CONSTITUTE

, jointly and feverally, my lawful and irrevocable procurators, for me, and in my nmae, to RESIGN and SURRENDER, as I hereby RESIGN and SURRENDER, simpliciter upgive, overgive and deliver, the faid lands and others particularly above described, and lying in manner foresaid, in the hands of my immediate lawful fuperiors thereof, or of their commissioners having power to receive refignations and to grant new infeftments, IN FAVOUR and for new infeftments thereof, to be given and granted to my faid trustees, BUT IN TRUST ALWAYS, for the uses, ends and purposes, and with and under the provifions and declarations before specified, (but with which purchasers shall have no concern), or to their forefaids, heritably and irredeemably, in due and competent form; acts, instruments and documents in the premises, to ask and take; and, generally, every thing in the premifes to do, which to the office of procuratory in fuch cases belongs; AND I OBLIGE myself, my heirs and successors, to WARRANT the faid heritable subjects and debts to the purchasers and assignees thereof, in manner following; that is to fay, the faid heritable subjects, at all hands, or against all deadly, as law will.

will, and the faid debts from fact and deed; AND I RESERVE to myself sull power, at any time in my life, and even on deathbed, to REVOKE, ALTER, or BURDEN these presents; AND I DISPENSE with the DELIVERY hereof, and DECLARE these presents, in so far as they may be unaltered, (though sound in my repositories, or in the possession of a third party, undelivered at the time of my death), to have the effect of a delivered evident; AND I consent to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation; and thereto I constitute

, my procurators, &c. And further, I hereby desire and require you , jointly and

feverally, my baillies in that part hereby specially constituted, that, on sight hereof, ye pass to the ground of the said respective lands and others foresaid, and there give and deliver heritable state and sasine, actual, real, and corporal possession of All and whole the lands and others foresaid, lying, bounded and described in manner above-written, to my said trustees, or to the survivors or survivor of them, for the uses and purposes, and under the conditions above written, or to their foresaids; AND THAT, by delivering to them or him, or to their or his attornies or attorney, in their or his name, bearers hereof, of earth and stone of the ground of the said lands, with all squar and necessary

necessary symbols; AND this in nowise ye leave undone, which to do I commit to you, jointly and severally, my said bailies, full power, by this my precept of sasine, directed to you for that effect. In witness whereof, &c.

This example will fufficiently explain the form of the trust disposition; and I shall now subjoin the purposes of other trusts, in illustration of this form of deed.

2. Example of the Purposes of a Trust, where the Trustees are directed to collect Funds, and to purchase and entail Lands.

I shall give not only the purposes, but the manner of appointing the trustees, because it seems to have advantages over the joint nomination. The grantor, "under the burdens, reservations, and conditions after expressed, assigned, disponed, and made over, to and in favour of A, B, C, and D, as trustees, for the ends and purposes therein mentioned; but under this condition, that the said A shall have the sole power, in the first place, by himself alone, to manage and execute the said trust, without the consent of the other trustees, in the same manner as if he had been named the sole trustee; but in case of the death or non-acceptance of the said A, or that he should not fully execute the said trust within the space here-

by limited, THEN the faid B shall, in the next place, have the fole power to execute the fame; and in case of the death or non-acceptance of the faid B, or his failing to execute the trust, in manner foresaid, then the sole power of acting shall devolve on the faid C; and in case of the death or non-acceptance of the faid C, or his failing in manner foresaid to execute the said trust, THEN the fole power of acting shall devolve on the said D; AND in case they shall all FAIL to EXECUTE this trust within the time herein specified, THEN to and in favour of my own heir at law and his affignees, BUT for the uses, ends and purposes, and under the conditions hereinafter expressed, ALL and whole, &c. &c.; But in Trust Always, and to the ends and purposes hereinafter expressed, viz. to the intent that both my heritage and moveables hereby made over, may be fold and collected, and that my faid acting trustee for the time shall, out of the first and readiest of the said funds, IN THE FIRST PLACE, pay all my just and lawful debts, with my deathbed and funeral expenses; SECONDLY, that he shall pay, against the first Whitfunday or Martinmas after my death, the following legacies, with interest from the faid term of payment, and a fifth part more of penalty, in case of failure, viz .- (here the legacies were enumerated)-THIRDLY, that the faid acting trustee for the time shall pay the following annuities, viz. to F an annuity of 150l. Sterling during all the days

days of his life, and to G the fum of 50l. yearly during all the days of her life; and, in the event of her furviving the faid F, an annuity of scol. Sterling, from the death of the faid F: which annulties shall be payable at two terms in the year, Whitfunday and Martinmas, by equal portions, and shall commence at the first term of Whitfunday or Martinmas after my death, the half year's annuity then payable being for the enfuing half year, and bearing interest from that term, during the not payment thereof, with a fifth part more of each half year's annuity of liquidated penalty, in case of failure in the regular payment thereof; and which two annuities I hereby expressly declare to be preferable burdens on my faid lands and estate: FOURTHLY, that the faid acting trustee, for the time, shall be bound, as he is hereby bound, to apply the trust funds in the purchase of lands where they can be most conveniently got, to the extent of the then free capital of my faid estate, or as near the value thereof as may be, including the interest that may have accumulated preceding the time of making the purchase (after deduction of my debts, deathbed and funeral expenses, legacies and annuities which may then have fallen due, and every neceffary expense of management and execution of the faid truft); and having taken the rights and dispositions of the said lands in their own names, they shall settle and secure the same under a strict entail,

entail, in favour of the following feries of heirs, viz. to and in favour of—(here the destination was expressed)—but under the condition always, that the faid disponee and whole heirs of entail hereby fubstituted to him, shall assume and constantly bear the name and arms of power to conjoin therewith any other name and arms that may be found necessary; and which entail shall also contain all other usual conditions, limitations, exceptions therefrom, powers to grant leafes and provisions to wives and younger children, clauses irritant and resolutive, and other provisions necessary, agreeably to any draught of the faid entail that shall be figned by me in my lifetime relative hereto; but failing my making and figning fuch draught, then in terms of, and agreeably to such other draught of an entail as shall be approved of by the Lord Advocate of Scotland, or Dean of Faculty for the time, in the option of the acting trustee; and which entail the faid acting trustee is hereby bound to record in the register of tailzies, and to render effectual by giving infeftment to the faid disponee, or heir of entail entitled to fucceed to the faid lands under the faid destination; AND I do hereby further Declare that the disponee or heir of entail in posession for the time, and the faid estate itself, so laid under entail, shall be specially burdened, as I hereby expressly burden the same with the foresaid two annuities, to the faid F and G during their lives;

AND LASTLY, as it may be difficult to find lands to purchase, equal to the precise amount of the then free capital fund, the acting trustee for the time shall be at liberty to pay over any balance that may remain after paying the price of the lands to the disponee or heir of entail entitled to hold the estate at the time, the same being less than 300l. Sterling, that so this trust may be thereby completed; AND FURTHER, for the encouragement of my said trustees, to accept of the trust hereby committed to them, &c. in common form.

An example of an entail executed by the trustee, in terms of the trust, will be found amongst the entails; and the following example of an entail by trustees, while it shows the form of such an entail, will also afford another example of the manner of expressing the purposes of a trust.

1. Deed of Entail executed by Trustees, in obedience to the Directions of a Trust Deed.

We, A, B, and C, the furviving trustees nominated by the deceased D, in a trust disposition executed by him upon the , and recorded in the books of Session ; by which deed we, with certain other persons,

now dead, and the furvivors or furvivor of us. were appointed trustees for the purposes therein expressed; and we, the subscribers, being a quorum of the faid trukees, considering that the faid D, by the faid trust disposition, did, for the causes. and with and under the conditions and provisions therein contained, GIVE, GRANT and DISPONE, to and in favour of us and certain other persons therein mentioned, and to the furvivors or furvivor of us. IN TRUST for the uses and purposes therein specified, ALL DEBTS and sums of money, heritable and moveable, lying money, household furniture, goods, gear and effects whatfoever, then pertaining or belonging to him, or that should be pertaining and belonging to him at his death, with all writs relating to the same, dispenfing with the generality thereof, and admitting the faid trust disposition to be as valid and effectual as if every particular thereby disponed, in general, were severally enumerated and set down therein; AND he thereby NOMINATED US, the faid trustees, or such of us as should accept, and the furvivors or furvivor, or acceptor of, us to be his fole executors, univerfal legators and intromitters with his goods and gear, and all other moveables falling under testament, and he thereby excluded all others from that office; AND in case he should make up any inventory or list of his debts and effects, and fign the same, such list or inventory should be held as a part thereof, and

and fave the necessity of confirmation; AND he thereby DECLARED the major part of the faid trustees accepting, and in life for the time, or the furvivor or fole acceptor; to be a quorum; and as fuch possessing full power to execute the said trust; and further, he thereby assigned and MADE over to us, the faid trustees, or our quorum foresaid, the rents, mails and duties, of all lands, teinds, tenements, feuduties, and others belonging, or that fliould belong to him at his death; and that during the minority of the heir or heirs appointed by him to fucceed therein, by any entail or disposition thereof, executed or to be executed by him; AND in case we the said trustees should think it proper to fell his houses, tenements; feuduties, fuperiorities, lands and others; in and about the town of and any houses that might belong to him in the town of Edinburgh, he thereby AUTHORISED and EM-FOWERED US, his faid trustees, or our quorum; to fell the same at such price or prices as we should think proper, with the burden always of his wife's liferent of the house in Edinburgh, and to grant dispositions, containing procuratories of refignation, precepts of fafine, and all other usual clauses, and obliging his heirs in warrandice thereof, the proceeds whereof to be added to the trust subjects thereby made over to us; AND he thereby empowered his faid trustees, or their ΨOŁ. V. quorum.

quorum, to appoint factors from time to time for executing the trust under us, and to allow him fuch falary, and to give fuch gratifications to any other person or persons as shall be; employed, as We might judge reasonable : DECEARING that such factor shall not have power to uplift principal fums due by bond or bill exceeding rook. Stere ling, except with the confent of our quorum; AND it is thereby DECLARED, that the faid trust deed was granted by him, with the burden of the payment of all his just and lawful debts, funeral charges, and any legacies to be left by him; AND it is thereby further DECLARED; that the faid trustees, or their quorum, should be bound to direct their factor to convert the goods and gear of the faid D into money, and out of the first and readiest thereof, and of the amount of the debts due to him, to pay off the debts due by him, and his funeral expenses and legacies; AND the residue of the subjects thereby assigned, to be specked and LENT OUT, and the securities thereof to be taken in name of us, the faid trustees, in trust for the purposes therein contained; AND the yearly proceeds thereof to be applied, in the BIRST PLACE, in payment of the factor fee, and other expenses of management; IN THE SECOND PLACE, for payment of the annuity provided for his wife, by their contract of marriage; IN THE THIRD PLACE, for payment of any other annuities that might be left

left by him to any other person; AND in the FOURTH PLACE, for the maintenance and education of the heir appointed by him to succeed to his land estate for the time being, in such manner as we the faid trustees should judge necessary; during his or her minority; and the refidue, if there should be any, to be STOCKED and LENT OUT in the name of us, the faid trustees, for the purposes of the said trust; and after his or her majority, the full refidue and clear produce to be paid yearly to his faid heir; AND, after his faid heir's majority, he thereby APPOINTED, AUTHORISED and EMPOWERED us, his faid trustees, or our quorum, as foon as convenient, to lay out and employ the trust-subjects in the purchase of lands, and to take the rights and fecurities thereof to the same heirs that are contained in any disposition or entail executed or to be executed by him, of his estate of , and under all the conditions, provisions, clauses irritant and resolutive, contained in the faid tailzie, and to record the same in the register of tailzies, and expede charters and infeftments thereon; AND he thereby EMPOWERED us, his faid trustees, during the minority of the heir in his estate, descended of his body, to pay for M a fum not exceeding 1000l. Sterling, to put him into the army, or any other profession or employment he should chuse: AND FURTHER, he thereby EMPOWERED the faid trustees, or their Q 2 quorum,

quorum, or the furvivor or acceptor of us, to AS-SUME any person or persons as trustees, alongst with ourselves; and he thereby declared the perfons fo to be affumed to have the same powers in every respect as if they had been named therein; AND in regard we the faid trustees were to have no intromission with the said subjects ourselves, it is thereby DECLARED, that we were not to be accountable therefor, further than to produce our factors' accounts and vouchers thereof, to show how the fame had been applied, AND that the factors might be fued for any balances in their hands; AND we the faid trustees were not to be liable for any omissions in the execution of the premises in any fort, AND were to be paid out of the trust-subjects all charges and expenses we or any of us might be put to in the execution of the faid truft; AND DECLARING, that we the faid truftees were to employ factors habite and repute refponsible at the time; providing, nevertheless, that if any of the faid trustees, who were not factors, should have intromissions with the trust-subject, such trustee was to be liable for his intromissions. As the faid trust-disposition, containing several other clauses, in itself more fully bears: AND FUR-THER. CONSIDERING that the faid D having died , without revoking or in the month of recalling the faid trust-disposition and settlement, we accepted of the trust thereby committed to

us, and, in virtue thereof, entered upon, and have continued to manage the faid trust funds to this time, AND for that purpose did appoint factors and agents for recovering the faid funds, and converting the same into money; and out of the first and readiest thereof we paid the said D's funeral charges, and his debts and legacies, as far as they were known to us (excepting the annuities after specified, with which these presents are burdened); AND THAT we have also purchased the lands and others after disponed; and that E the son of the faid D, succeeded to him, in virtue of the said trust disposition, and is desirous that we should denude of our trust in terms of the faid fettlement; AND CONSIDERING that independently of the lands fo purchased by us, the remaining trust funds of the faid D still outstanding, and which are conveyed to the faid E by a separate disposition relative hereto, are supposed to be fully sufficient for discharging any debts of the said D that may be still outstanding, (excepting always the faid annuities), and probably will leave a reverfion for the purpose of reimbursing the said E for several considerable sums of money laid out by him in making improvements on the faid lands, to a much greater amount than the value of fuch reversion. AND which we are advised is agreeable to our powers by the faid trust; AND we having RESOLVED, on these accounts, and in further

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ther execution of the faid truft, to execute the DISPOSITION and DEED OF ENTAIL of the lands fo purchased by us in manner underwritten; THERE-FORE, in obedience to the directions of the faid trust deed, and pursuant to the powers thereby committed to us, we, as TRUSTEES foresaid, have DISPONED, as we hereby GIVE, GRANT, and DIS-PONE the lands, teinds, and others, after specified, with the pertinents thereof, to and in favour of the faid E and the heirs whatfoever of his body; whom failing, to the other heirs of tailzie and provision particularly mentioned in the procuratory of refignation underwritten, heritably and irredeemably, BUT ALWAYS with and under the BUR-DENS, PROVISIONS, RESTRICTIONS, limitations, clauses irritant and resolutive, inserted in the procuratory of refignation herein contained; AND we BIND and OBLIGE us, as trustees foresaid, TO IN-FEFT and SEISE the faid E and the other heirs after mentioned, on their own proper charges and expenses, in the said lands and others after specified, and that by refignation thereof in the hands of our immediate lawful superiors of the same, TO BE HELD in the same manner, and as freely in all respects as we hold or might have held the same ourselves; and for that purpose we hereby MAKE, CONSTITUTE, and APPOINT

, and each of them, jointly and feverally, our lawful and irrevocable procurators,

procurators, to RESIGN, as we hereby RESIGN, upgive, overgive and surrender, ALL and WHOLE the lands, barony, teinds, and others after mentioned, viz. ALL and WHOLE, &c. with all right, title, interest, claim of right, property and possession, petitory or possessory, which we, as trustees foresaid, or our authors or predecessors. had, have, or can pretend thereto, IN THE HANDS of our immediate lawful superiors thereof, or of their commissioners in their names, having power to receive refignations, and to grant new infeftments thereupon, IN FAVOUR and for new infeftment of the faid lands, teinds, and others to be made and granted to the faid E, and the heirs whatfoever of his body; whom failing, to the heirs whatfoever of the body of the deceafed E, -cousin-german of the said D; whom failing, to G, also cousin-german of the said D, and the heirs whatfoever of his body; whom FAILING, to H, natural daughter of the faid D, and the heirs whatfoever of her body; WHOM FAILING, to K, and his heirs and affignees whomfoever, the eldest daughter and heir female succeeding always without division, and excluding heirs portioners, through the whole course of succession, in all time coming, heritably and irredeemably, in due and competent form; PROVIDING and DECLARING ALWAYS, as it is hereby expressly PROVIDED and DECLARED, and to be inserted in the charters and instruments

instruments of fasine to follow hereon, and in the whole retours and after conveyances and infeftments of the faid estate, that the faid E, and the heirs whatfoever of his body, and whole heirs of tailzie above mentioned, who shall succeed to the faid lands and estate, shall, immediately upon their accession respectively, be BOUND and OBLIGED to assume and constantly use and bear the surname, arms, and defignation of D of D, as their own proper furname, arms, title and defignation, in all time after their succession; PROVIDED ALSO, as it is hereby expressly PROVIDED and DECLARED, and APPOINTED to be INSERTED and CONTAINED in the charter and instrument of sasine to follow hereon, and in the retours and after conveyances and infeftments of the faid lands and estate, THAT, &c. -(kere the conditions of the entail were inserted)-PROVIDING ALWAYS and DECLARING, that these presents are granted, and shall be accepted by the faid E, and the other heirs of tailzie above mentioned, with and under the burden of the payment of the feveral annuities which were left by the faid D to the persons after-named, viz. &c .--(here they were specified)—ACTS, INSTRUMENTS and DOCUMENTS, one or more, in the premifes to ask and take, and, generally, any other thing thereanent to do, which we, as trustees foresaid, could have done, if personally present, or which to the office of procurator in such cases is known to belong,

long, ALL which we prefume to hold good, and without revocation; AND FURTHER, we, the faid trustees, Assign and Dispone to the faid E and the heirs of tailzie above mentioned, in the order foresaid, NOT ONLY the whole rents, mails, and duties, kains, customs, and casualties of the said lands and others foresaid, for the crop and year, and in all time coming, with all

arrears due to us; BUT ALSO the whole writs and title-deeds of the faid lands, with all that has or may follow thereon, in the whole heads, clauses, tenor, and contents thereof; WHICH LANDS and others, WITH this present DEED OF ENTAIL and ASSIGNATION to the rents and title-deeds. we BIND and OBLIGE us, as trustees foresaid, and our respective heirs, executors and successors, to war-RANT to the faid E and the heirs of entail above mentioned, from our own proper facts and deeds respectively, done or to be done in prejudice hereof, excepting always from this warrandice the standing and current tacks and feu rights of the faid lands and others, or any part thereof, granted by us or our predecessors or authors; PARTI-CULARLY fundry TACKS of fmall portions of the estate, granted by us for long periods, for the purpose of building, and of encouraging inhabitants to fettle on the faid lands, BUT without prejudice to the faid E, and the heirs of entail foresaid, to QUARREL and IMPUGN the faid tacks and feu rights,

on any defects or nullities in law, which will not infer warrandice against us or our predecessors and authors; AND WE APPOINT this deed of entail to be immediately RECORDED in the register of tailzies, AND hereby AUTHORISE a petition to be presented to the Court of Session, in our names, for that purpose; and having herewith delivered up the whole title-deeds to the said E, we consent to the registration hereof, &c.

The Petition was given in, in name of the Trustees, and of E, the Institute.

The following example of an Entail by Trustees, states the assumption of new Trustees, in obedience to the directions of the trust deed.

Another Example of an Entail by Trustees, where new Trustees have been assumed by the original Trustees.

BE IT KNOWN TO ALL MEN by these presents, THAT WE A, now of A, and B, being the only surviving trust disponees named and appointed by the now deceased R O of A, in manner, and for the uses and purposes herein after expressed; AND WE the Hon. D S, &c., A, younger of A, and

and D, additional trustees assumed, named, and appointed by the faid A and B, and the now deceased J R, in manner also herein aftermentioned. WHEREAS by two feveral dispositions and assignations, figned and executed by the said R O, the one dated and the other. , both recorded in the books of Session (office O M), on the 26th November 1784, the faid R O affigned and disponed certain debts, heritable and moveable, due to him. to and in favour of M R, and to the faid A and B, and the faid J R, and to fuch other persons as should be assumed by the said trust disponees. in manner mentioned in the faid deed of conveyance, and to the survivors or survivor of the said disponees, either therein named, or to be assumed, who should accept of the said trust; the major part of those accepting and furviving, if more than two, being always a quorum; IN TRUST, for the uses and purposes mentioned in the aforesaid two dispositions and assignations: AND WHEREAS, in virtue of the powers vested in us the original trustees, by the said trust deeds, we the said A and B, and the deceased J R, by deed of nomination, dated and recorded in the books of Session, 2d March 1795, ASSUMED, NAMED, and APPOINTED the faid D S, and A, younger of A and D, as additional trustees, to concur with us in executing the trust of the deceased R O, with the same powers that are vested in us by the faid two trust deeds; By which several. deeds, it is, amongst other things, PROVIDED and DECLARED, that, after deducting the expense to be laid out in executing the truft, which the faid trustees are authorised to retain, they shall, as foon as conveniently may be, lay out and employ the feveral fums conveyed to them in the purchase of lands, lying within that part of Great Britain called Scotland; and as foon as the faid purchase shall be made, and the right to the lands so purchased properly vested in the said trustees. they shall be BOUND and OBLIGED instantly to convey and make over the same to and in favour of the heirs male of the body of the faid RO; WHOM FAILING, to the heirs whomfoever of his body: WHOM FAILING, to the heirs male, general and of tailzie, called after them to the succession of the estate of A, by a disposition and tailzie made and executed by him, of date

, BUT ALWAYS with and under the feveral conditions, provisions, restrictions, limitations, clauses irritant and resolutive, declarations and reservations therein contained, and with and under a further power to the said heirs, of providing their wives and younger children out of the lands and others herein after disponed, in manner herein after mentioned, as from the said feveral deeds more fully appears; AND WHEREAS

the faid R O having died without leaving lawful iffue of his body, the faid trustees did accept of the trusts, and in consequence thereof did purchase several lands and other subjects, part whereof have already been conveyed and made over, in terms of the faid trust deed granted by the faid R O to them: AND WHEREAS, since granting the faid conveyance, we by ourselves, and alongst with the faid additional trustees, have purchased . the lands and others underwritten for behoof of the faid trust, and have established rights to the same in our persons; AND WE the said surviving original trustees, and additional trustees, being now resolved, in farther execution of the said trust, TO CONVEY the faid lands and others to the heirs of the faid tailzie, in terms of the faid trust deed, THEREFORE WIT YE US the faid, &c. (naming them) to have given, granted, &c .- (and so the tailzie goes on in common form.)

These examples sufficiently explain the use of the trust right connected with the entail, and the manner of carrying the purposes of the trust into effect. I shall therefore proceed to explain the nature of those deeds, by which the entailed estate is transmitted to the heir of entail.

#### CHAP. II.

OF THE DEEDS NECESSARY FOR RENEW-ING THE RIGHT TO AN ENTAILED ESTATE IN THE HEIR OF ENTAIL.

In this chapter, I am to give examples of the forms of those deeds by which the right to an entailed estate is transmitted to the heir of entail: Of course, I must consider separately the case of lands holding of the Crown, and that of lands holding of a subject superior; because, in these cases, the forms of completing the title of the heir differ. There will be a subdivision in each, arising from the state of the entail, or the nature of the title in the person of the last heir.

## SECT. L WHERE THE LANDS HOLD OF THE CROWN.

WHERE an heir of entail has to complete his title to lands holding of the Crown, if no infeftment has passed on the entail, it is by a general service, as heir of entail, that he can carry right to the unexecuted procuratory curatory or precept, through which he may complete his title.—But when infeftment has followed on the entail, the heir of entail will require a fpecial fervice for completing his title; and I shall give the deeds necessary in each of these cases.

# I. WHERE THE ENTAIL REMAINS PERSONAL.

THE first step is, by a general service, to acquire right to the unexecuted procuratory and precept of sassine. For this purpose, a note is given in to chancery for a brieve to serve the heir of entail under such and such a settlement, which brieve is made out in common form. I shall not here give more than the forms peculiar to the service of an heir of entail, as the forms of services, with all that relates to that department, will be found under the title of services in this volume.

# 1. Procuratory for expeding a General Service as Heir of Entail.

I, B, only fon of the deceafed A, Do hereby NAME and APPOINT

and each of them, conjunctly

and severally, my lawful and irrevocable procurators, with full power for me, and in my name,
to purchase brieves forth of his Majesty's chancery, and to procure me duly and lawfully served and retoured as heir male of tailzie and provision to the deceased A my father, in terms of a
deed of entail executed by the said A, whereby
he ensured to himself, and the heirs male of his
body, whom sailing, to the other heirs of tailzie
therein particularly specified, all and whole the
lands of and others therein particularly described, which entail is dated

, and recorded in the register of tailzies AND that under the whole conditions, provisions, clauses irritant and resolutive therein contained in terms of law; AND thereupon, and upon all and fundry the premisses. to ask and take instruments and documents, and generally to do every other thing thereanent which I could do myself if personally present; RATIFYING hereby, and APPROVING of, whatever my faid procurators lawfully do, or cause to be done in the premisses; AND I consent to the registration hereof in the books of Council and Sesfion, or other judges' books competent, therein to remain for preservation; and for that purpose constitute

my procurators. In witness

whereof, &c.

#### 2. Claim in a General Service as Heir of Entail. \*

HONOURABLE PERSONS AND GOOD MEN OF INQUEST; I, B, only fon of the deceased A, say unto your wisdoms, that the deceased A, died at the faith and peace of our Sovereign Lord the King, and that I am nearest and lawful heir male of tailzie and provision to the said A, under a deed of entail executed by the said A, whereby he gave, granted, and disponed, to and in favour of himself and the heirs male of his body; whom failing, &c.—(here the destination will be expressed until it come to the claimant)—which entail is dated, &c. &c., and recorded in the register of entails, &c. &c. AND THAT I am of lawful age:

HEREFORE I befeech your wisdoms to serve and cognosce me nearest and lawful heir male of tailzie and provision, under the said deed of entail in general, to the said deceased A my father, and cause your clerk of court retour my service to his Majesty's chancery under your seals.

According to Justice and your wisdoms' answer.

Signed by the claimant or his attorney.

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In this fervice, the deed of entail ought to be produced to the jury; but the retour need not express the terms and conditions of the entail. The service being retoured, the heir of entail has acquired a right to the unexecuted procuratory and precept, and may complete his right, either by taking infestment on the precept, and obtaining a charter of confirmation, or by resigning and receiving from the superior a charter of resignation, the infestment on which completes his title.

The titles in favour of the heir differ very immaterially, in point of form, from those which are required for completing the title of the institute; of which examples have been already given. The points in which they differ shall be shortly taken notice of.

3. Instrument of Sasine in favour of an Heir of Entail, who has acquired right to the Precept by a General Service as Heir of Entail.

IN THE NAME OF GOD, &c.—(in common form as in the instrument of sasine on a deed of entail, until you have completed the narrative of the deed of entail: Then say)—AND ALSO HAVING and HOLDING in his hands, a retour of the general fervice of the faid B, as nearest and lawful heir male of tailzie and

and provision of the said deceased A, under the said deed of entail, expede before of date and duly retoured to his Majesty's chancery; BY WHICH general service, the said B has acquired right to the precept of sasine in the said deed of entail still unexecuted, and whole other clauses therein contained; WHICH DISPOSITION and deed of ENTAIL, containing therein the precept of sasine after inserted, WITH THE RETOUR of the said GENERAL SERVICE, the said attorney presented, &c.—(the rest of the instrument is in the common style of a sasine on an entail.)

4. Signature of Confirmation of a deed of Entail, and Sasine following thereon, in favour of a Substitute acquiring right to the unexecuted Precept by General Service, as Heir of Entail.

OUR SOVEREIGN LORD, with the special advice and consent, &c.—(in common form)—ORDAINS a charter to be made and passed under the seal appointed by the treaty of union to be kept and used in Scotland in place of the great seal formerly used there; RATIFYING and APPROVING, and for his Highness and his Royal successors perpetually confirming; likeas his Majesty, with the advice and consent foresaid, by these presents, RATIFIES and APPROVES, and for himself and his Royal successors perpetually confirms to his Majesty's

ty's LOVITE B now of only fon of the deceased A, and heir of entail, served and retoured to his deceased father, a disposition and deed of entail, made and executed by the deceased A, bearing date

whereby he gave, granted and disponed to himself and the heirs male of his own body: WHOM FAILING, &c.—(here the destination was verbatim inserted)—BUT WITH and UNDER the feveral provisions, conditions, restrictions, limitations, clauses irritant and resolutive, burdens, declarations and refervations, contained in the faid difposition and deed of entail, and herein engrossed, viz. WITH and UNDER, &c .- (here the whole conditions of the entail were verbatim engrossed) -AND the faid A thereby BOUND and OBLICED himself and his heirs and successors, to infeft, vest and feise himself, and the heirs male of his body; WHOM FAILING, the other heirs and fubilitutes therein and before written, in their order, in the lands, fishings, and others thereby disponed; To BE HELD either from him the faid A and his foresaids, of and under their respective superiors of the fame, as freely as he held or might have held the said lands and others himself, or of and under him and his foresaids, in manner therein mentioned; and that either by refignation or confirmation, or both, or either, the one without prejudice to the other; BUT ALWAYS with and under the conditions, provisions, restrictions, limitations.

tations, claufes irritant and resolutive, declarations and refervations therein and before written; AS ALSO the INSTRUMENT of SASINE of the lands and others above described, taken in favour of the said B in virtue of the precept of sasine in the foresaid disposition and deed of entail, and of the retour of his general service as nearest and lawful heir of tailzie and provision of the said A his father, under the forefaid disposition and deed of entail, expede before the sheriff of day of the , duly retoured to our chancery; which instrument of sasine is given under the hands of notary public, dated and recorded

: AND THAT IN THE WHOLE heads, claufes, articles, tenor and contents of the faid feveral writings; DISPENSING hereby with the generality of this confirmation, and DECLARING, that the same is and shall be as valid and effectual, and of as great force, strength, and effect, as if the said disposition and deed of entail, precept of fasine therein contained, retour of the faid general fervice, and instrument of sasine following thereon, were all herein verbatim inferted, and as if the confirmation had been granted before the taking of the faid fafine; WHEREANENT, and with all other objections, defects, or imperfections that can be anyways alleged or objected against the same, or this confirmation thereof, if any be, his Majesty has  $\mathbf{R}_{3}$ 

DISPENSED.

DISPENSED, and by these presents, with consent foresaid, DISPENSES for ever; TO BE HELD, and to hold, &c. paying, &c. AND that the said charter be extended in ample form, with all clauses needful, and precepts be directed thereupon. Given AT EDINBURGH, &c.

If, in place of completing the title by taking infeftment and obtaining a charter of confirmation, the heir shall prefer the form of a charter of resignation for completing his title, he will present a signature of resignation, on the unexecuted procuratory to which his general service gives him a right.

5. Signature of Resignation in favour of an Heir of Entail, proceeding on the Procuratory in the original Entail, to which he had acquired right by a general Service as Heir of Tailzie and Provision under that deed.

OUR SOVEREIGN LORD, with ADVICE and CON-SENT, &c. (in common form,) ordains a charter to be made and passed under the seal appointed by the treaty of union, to be kept and used in Scotland, in place of his Majesty's great seal thereof, in due and competent form, GIVING, GRANTING, and DISPONING, and for his Majesty and his royal fuccessors fuccessors confirming, likeas his Majesty, with advice and consent foresaid, GIVES, GRANTS, and DISPONES, and for his Majesty and his royal succeffors, perpetually confirms to his Majesty's wellbeloved B and the heirs male of his body; whom failing, to the heirs female of his body, &c. (here the destination was verbatim inserted); WHOM ALL FAILING, to the faid A's (the grantor of the entail and father of B) own nearest heirs whomsoever, heritably and irredeemably, ALL AND WHOLE —(here the lands were described)—BUT ALWAYS. WITH and UNDER the express burdens, reservations. limitations, clauses irritant and resolutive after mentioned. viz. PROVIDING and DECLARING, as it is by a deed of entail, of date executed by the said A of the lands and others

executed by the said A of the lands and others foresaid, in favour of the heirs of entail above described, specially provided and declared, that the said B and his heirs of tailzie above written, shall be held and obliged to use and bear the surname, title, arms, and designation of , &c.—(here the conditions of the entail were verbatim inserted as in the entail)—which lands and others above written pertained heritably of before to the said A and were held by him immediately of us and our royal predecessors, as superiors thereof, and were by him, and his lawful procurators in his name, to that effect specially constituted, by virtue of a procuratory of resigna-

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tion contained in a bond of tailzie dated . and recorded in the books of Sellion (office ) the óf , made and granted by the faid deceased A, to and in favour of himself, and the heirs male of his body; WHOM FAILING, to the other heirs of tailzie before mentioned; and with and under the express burdens, reservations, limitations, clauses irritant and resolutive therein mentioned; AND to which the faid B acquired right conform to his general service, as heir male of tailzie and provision to the said deceased A, his father, expede before , on the , duly retoured to the chancery, RESIGNED, purely and fimply, by staff and baton, as use is, in the hands of for himself, and in name of the said remanent barons, as having power to receive refignations and grant new infeftments of the faid lands and others, IN FAVOURS and for new infeftments of the fame, to be MADE, GIVEN and GRANTED to the faid B, and to the heirs male of his body; whom FAILING, to the other heirs of tailzie above mentioned, As AUTHENTIC INSTRUMENTS and DOCU-MENTS taken upon the faid refignation, in the hands of notary-public, of the date of these presents, more fully bears; AND his Majesty, with advice and consent foresaid, WILLS and GRANTS, and, for him and his Royal successors, **DECERNS** 

DECERNS and ORDAINS, that one faine, &c. (in common form)—TO BE HELD and for to HOLD the foresaid whole lands, mills, teinds, and others, with the pertinents above disponed, by the said B and the heirs of tailzie substituted to him, in the order above mentioned, of his majesty, &c. (in common form)—GIVING yearly the said B, and the heirs of tailzie substituted to him in the order before mentioned, for the lands, &c. (in common form)—AND his Majesty ORDAINS the said charter to be extended in the most ample form, with all clauses needful, and that precepts be directed hereupon for that effect. GIVEN AT EDINBURGH, &c.

This fufficiently explains the forms where the lands hold of the Crown, and the entail has remained personal. I am next to suppose that it has been rendered real by infestment.

### II. WHERE THE ENTAIL HAS BEEN REN-DERED REAL BY INFEFTMENT.

WHERE infeftment has been taken on the entail in favour of the institute, or where any of the heirs of entail have completed a feudal right to the estate by infestment, the estate must

must be taken up by the ensuing heirs under a special service. I shall give the form of a claim for the special service of an heir of entail at length, as an additional example of the conditions of the entail.

Claim for the special Service of an Heir of Entail, which Entail contains the usual Conditions, with power to the Heir to feu out without diminution of the rental, and with power to sell at the sight of the Court of Session for paying the Entailer's debts.

Honourable persons and good men of inquest, I, Mrs C, now of C, spouse of M, say unto your wisdoms, that the deceased Mrs C, my mother, died last vest and seised, at the faith and peace of O. S. L. the King, in the see of all and whole, &c. conform to a charter of the said lands, barony, and others, granted by his Royal Highnes George Augustus Frederick, Prince of Great Britain and Wales, as Prince and Steward of Scotland, to the said deceased Mrs C my mother, dated , and sealed at Edinburgh, whereby it is decerned and ordained that

whereby it is decerned and ordained, that fasines, to be taken now, and in all time coming, at the manor place of C, or upon the ground of

any part of the lands before mentioned, by delivery of earth and stone of the ground thereof. only, without any other fymbol or folemnity, are and shall be as valid and effectual, for all and fundry the lands, barony, fishings, teinds, and others before mentioned, as if particular fasines were taken upon each part thereof, by delivery of all the usual symbols, notwithstanding the same may be of different denominations, lye difcontiguous, and from their nature might require different fasines, symbols and solemnities; whereanent, and with all nullities and imperfections which can be objected against the validity and formality of fuch fasines, his Royal Highness, for himself, and his Royal successors, dispensed for ever; AND ALSO, conform to instrument of safine in favour of the faid Mrs C, following upon the faid charter, dated . and recorded in the general register of sasines at Edinburgh, the of the same month; or WHICH LANDS and BARONY, teinds, fishings, and others, A C, Esq. late of C, my uncle, executed a disposition of tailzie, dated the recorded in the register of tailzies the of the faid month of June, and registered in the books of Council and Session, the whereby he GAVE, GRANTED and DISPONED the faid lands and barony of C, with the teinds, fishings, and others before mentioned, to and in favour of himself, and the heirs whatsoever of his body :

body: WHOM FALLING, to B. now deceased, his fifter german, eldest daughter procreated of the marriage between his father and B, his fecond wife, mother of the faid A C, and the heirs whatfoever of the body of the faid B C; WHOM FAIL-ING, to the faid C, my mother, the other fiftergerman of the said A C, and the heirs whatsoever of the faid C: WHOM FAILING -(here the remaining part of the disposition was inserted)—WHOM FAILING, to the nearest heirs whatsoever of the said AC; BUT WITH and UNDER the conditions, provisions, restrictions, limitations, and clauses irritant and resolutive, therein and after written, viz. WITH and UNDER these CONDITIONS, that as oft as the fuccession shall happen to devolve upon females, the eldest of them shall always succeed without division, and the right of primogeniture shall take place amongst the females, throughout the whole course of succession, in the same manner as the law has established primogeniture amongst males: And that the heirs of the body of the faid A C, and all the other heirs succeeding to the faid lands and barony, shall be bound and obliged to bear the furname of C, without any addition thereto, and to carry and use the arms and title of C of C, and also to possess and enjoy the faid lands and barony by virtue of the deed of entail executed by the faid A C, and transmissions thereof, and by no other right and title; and also to preserve all the conditions, restrictions,

firictions, and irritancies contained in the faid disposition of entail, to be verbatim inserted in all their charters, retours, fasines, and other investitures of the faid lands and barony; and also timeously to fatisfy and pay all real and public burdens affecting the faid lands and barony, and all such debts and obligations which should be due and payable by the faid C, or the heirs male of his body, so as the said lands and estate may not be evicted for not payment or performance thereof; and also, to purge and procure, renounced and discharged, all adjudications, apprisings, and all other legal executions whatfoever, which shall be obtained of or against the said lands and barony, for not payment or performance of any burdens, debts, demands, or obligations to which the faid lands and barony shall be found to be fubjected by law; and, for that end, any heir in possession at the time of obtaining such adjudication or other legal execution, shall be bound to redeem the same, four years at least before the expiry of the legal reversion of the faid lands and execution; and he or she failing so to do. shall forfeit his or her right to the said lands and barony, in manner after mentioned; and the next heir shall be bound to redeem three years before the expiry of the faid reversion, and shall forfeit his right in case of failure; and thereafter, the next heir called to succeed by the failure of the two former nearer heirs, shall be obliged, under

under the forfeiture also of his or her right after specified, to purge and redeem such legal execution two years before the expiry of the faid legal reversion; and also, under this condition, that in case a nearer heir shall exist after the succession of a remoter heir, then such remoter heir, and the descendants of his or her body, shall be obliged to denude themselves of the faid lands and barony in favour of the nearer heir, so soon as he exists; reserving only to such remoter heir the rents and profits of the faid lands due at and preceding the term of Whitfunday or Martinmas immediately preceding the existence of the faid nearer heir: AND PROVIDED always, that in case such remoter heir shall have succeeded, by his having redeemed any adjudication; or other legal execution, and through the failure of the former nearer heirs to redeem the fame, then the heir who had thus redeemed, and however remote, shall not be obliged to denude himself, or herself, in favour of any nearer heir existing, whether before or after fuch redemption; AND WITH AND UNDER these restrictions, that the husbands and wives of all the heirs fucceeding to the faid lands and barony shall be excluded from all right of courtely or terce of the same; and that it shall not be in the power of any of the faid heirs, whether of line or tailzie, to alter the course or order of succession prescribed by the faid deed of entail, nor the conditions, restrictions, or irritancies therein contained, or

to fell, or to wadfet, the faid lands and barony, or any part thereof, or to burden the fame with debts, or to commit treason, or to do or grant any other act or deed, civil or criminal, whereby the faid lands and barony may be forfeited to the Crown or fifk, or may recognosce to the superior, or may, in any other manner, be burdened or evicted; or even to fet tacks thereof for a longer space than nineteen years without diminution of rental, or for a longer space than the setter's lifetime, in case of any diminution of the rental: And also under this limitation, that the said lands and barony shall in noways be affected or burdened with, nor be subjected, or liable to be adjudged, forfeited, or any other way evicted, either in whole or in part, for or by the debts or deeds contracted or granted by any of the faid heirs, whether before or after the succession to, or attaining possession of the said lands and barony, or with, or for, or by crimes, delicts, or acts, civil or criminal, committed by them, or by their faults or neglects, prior or posterior to their attaining possession; and with and under these irritant and refolutive clauses following, viz. that in case any adjudication, apprifing, or legal execution shall be obtained of or against the fee or property of the faid lands and barony as aforefaid, and that any heir, in possession at the time, shall fail to purge and redeem the same, four years before the expiry of the legal reversion thereof.

thereof, then he or she shall lose and forfeit his or her right and title to the faid lands and barony; and the same, together with the right of redemption, shall fall and devolve to the next heir of entail, who would fucceed, if the contravener were dead; and if such next heir shall likewise fail to purge and redeem the same three years before expiry of the legal reversion, he or the shall also lose his or her title; and the said lands and barony, with the right of redemption, shall devolve to the next heir who would succeed if the two former contraveners were dead. And if fuch third heir shall likewise fail to purge and redeem the faid execution and lands, two years before expiry of the legal reversion, then he or the shall likewise forseit his or her right thereto; and the faid lands and barony, with the right of redemption, shall devolve to any of the subsequent heirs of entail, nearer or more remote, who shall think fit to redeem the said lands and barony, and purge the faid legal execution, before the expiry of the reversion; PROVIDED ALWAYS, that in case two or more of the said heirs be ready and willing to redeem and purge, as faid is, the nearer heir shall always be preferred to the benefit of such redemption before a remoter heir: And with and under this irritancy also, that in case any of the said heirs shall fail to bear the furname of C, without any addition thereto, and to use and bear the arms and designation of

C,

C, then the heirs fo failing, and the descendants of his or her body, shall forfeit all right which they have, or might have, to the faid lands and barony; and the fame shall devolve to the next heir of entail who would fucceed if the contravener was dead without iffue: As also, that in case any of the said heirs shall contravene the other premised conditions and restrictions, that is, shall fail or neglect to pay or perform all the faid other conditions, or shall act contrary to any of the faid other restrictions, then the heir so contravening, shall, for himself or herself only, forfeit all right and title to the faid lands and barony; and the same shall devolve upon the next heir of entail appointed to fucceed, although descended of the contravener's body, in the same manner as if the contravener were dead: and upon every contravention which may happen by and through the faid heir's failing to perform all the conditions, or acting contrary to any of the restrictions before written, not only all the debts, deeds and acts, contracted, granted, or done, and all neglects and omissions contrary to these conditions or restrictions, or to the true intent and meaning of the faid deed of entail, shall be void, hull, and of no force, effect or avail, against the faid lands and barony, and the other heirs fucceeding or called to fucceed therein, in the fame manner, as if fuch debts, deeds or acts, had never been contracted, granted, or committed, VOL. V.

ner to be directed by the faid Court, as much of the faid lands and barony as shall be judged necessary by that Court, for the payment of such debts, and fatisfaction of fuch obligations, as may have been due and prestable by the said A C er his predecessors, or the heirs male of his body. and which may be chargeable upon the faid lands, or the heirs fucceeding therein; AND ALSO EXCEPTING and RESERVING full power and liberty to the faid heirs, to provide their wives and hufbands, respectively, to a liferent of one third part of the faid lands and barony, by way of locality only, and fubjected to all the real and public burdens affecting the same; but to be restricted always during the existence of former liferent debts due by the faid A.C., or the heirs male of his body, and of the provisions after mentioned to the younger children, to the value of the free third part of the faid lands, after deduction of former liferents, the interest of the said debts, and interest of the faid provisions; so that the first liferent shall be restricted to one free third part, after deduction of interest, as said is; the next liferent shall be restricted to one free third part. after deduction of the former liferent, and interest; and each liferent may extend and increase to a full third part of the faid lands and barony, gradually, according as the faid debts and provifions shall happen to be paid off, and the former liferents shall cease: AND ALSO EXCEPTING and RESERVING

MESERVING full power and liberty to the faid heirs, to grant bonds of provision to their younger children, who do not succeed to the said lands, for such sums of money, bearing interest after the death of the grantor, as shall not for the whole children exceed three years free rents of the faid lands and barony, so far as unaffected, at the death of the grantor, with liferents to wives or husbands, and after deduction of the interest of the debts due by the faid A C or the heirs male of his body, and of former provisions to younger children, if any fuch there be. BUT PROVIDING NEVERTHELESS, that no adjudication, apprifing, or other legal execution, shall lye, or be competent, for the faid provisions, against the fee or property of the faid lands and barony, nor shall any more than one half of the free rents, emoluments and profits of the same (in so far as unaffected. for the time, with liferents and interest as aforefaid) be subjected and liable to any legal execution for payment of the faid provisions; BUT DE-CLARING, that the faid one half of the free rent, and also the persons of the heirs themselves to that extent, and any separate estate belonging to them to the extent of the whole provisions, shall ftill be subjected and liable to all diligence and execution competent by law for payment of the faid provisions, and penalties annexed thereto: Pro-WIDED ALWAYS, as it is by the faid disposition of entail, expressly PROVIDED and DECLARED, that the

the heirs male of the body of the said A C should not be tied down, or liable to any of the conditions, restrictions, limitations, or clauses irritant or resolutive before written, excepting only the condition of using and bearing the surname and arms of C of C, with or without addition, as they should incline; and excepting the restriction from doing or granting fuch acts or deeds whereby the faid lands and estate may be forfeited to the filk, or recognosce to the superior, and the irritant and resolutive clauses relative to the said conditions and restrictions; and saving always and reserving full power and liberty to the faid A C, at any time of his life, to revoke or alter the faid disposition of entail, in whole, or in part, as he should fee proper: But it is DECLARED, that fuch revocation or alteration should not be inferred by legal implications or conftructions, but only by an express writing under his hand, revoking or altering the faid disposition of entail; and that if there should be no such writing under his hand, then it is declared, THAT the faid disposition shall be valid and effectual to all intents and purpofes, although no infeftment should follow upon the fame during his life. AND THAT the faid deceased C, my mother, did obtain herself served heir of tailze and provision of T C Esq. last of C, fon of the faid A C, in the faid lands and barony of C, in terms of the foresaid deed of entail, conform to retour of her service, dated the

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duly retoured to chancery. whereon she was duly infest conform to her instrument of sasine, dated the the faid month of and recorded in the particular register of sasines, at - the

; And having fo made up her titles, the faid Mrs C did execute a deed of entail, ratifying and confirming the foresaid deed of entail executed by the said A C her brother, and which deed of entail was executed by the faid Mrs C in the very fame terms as the one executed by the faid A C, and without any alteration or addition theteto, and is dated the

registered in the particular register of tailzies, conform to the act of Parliament, the and recorded in the books of

Council and Session, the UPON the procuratory of refignation; in which last mentioned deed of entail, the faid Mrs C obtained the before mentioned charter under the great feal of the Prince of Scotland, and infeftment thereon, of the particular dates before specified; AND THAT I AM NEAREST AND LAWFUL HEIR OF TAILZIE AND PROVISION of the faid deceafed Mrs C my mother, by virtue of the deed of entail before narrated, executed by the faid A C, and deed of entail in confirmation thereof, executed by the faid Mrs C my mother, of the particular dates and registrations before specified; IN ALL AND WHOLE the lands, barony, teinds, fishings, burghs ωf

of barony, and others, specially and generally before described, with the pertinents; BUT ALWAYS WITH AND UNDER the conditions, provisions, restrictions, limitations, and clauses prohibitory, irritant and resolutive, reservations, powers, and faculties contained in the faid two deeds of entail, and herein particularly before narrated; AND THAT I am of lawful age; AND THAT the faid lands and barony of C, with the teinds, fishings and pertinents, are now worth yearly the sum of 81. Scots money, and were worth the sum of 40l. money forelaid in time of peace; AND THAT the valued rent of the faid lands and others according to which they pay a proportion of the land tax to the King, amounts to 223l. 6s. 8d. Scots money; AND THAT the faid lands, barony, and others, are HELD immediately of and under his Royal Highness, George Augustus Frederick, Prince of Great Britain and Wales, as Prince and Steward of Scotland, and his royal successors, Princes and Stewards of Scotland, immediate lawful superiors thereof, in free blench farm, fee and heritage for ever; FOR PAYMENT of the following fums, viz. for the faid lands and barony of C, comprehending and lying as aforesaid (but excepting the faid teinds) the fum of one penny Scots money at the term of Whitsunday yearly, upon the ground of the faid lands, in name of blench farm, if asked only, and that in lieu and place of the taxed ward and other duties and

fervices formerly payable for the faid lands and barony, by virtue of a mandate of the faid Prince, dated the 16th day of July 1784, making known his pleafure, that all lands and heritages which were formerly held of him, as Prince and Steward of Scotland, by fimple ward, should in future be held in blench farm: AND for the teinds, parsonage and vicarage, great and small, of the said lands, the fum of three shillings Scots money, as a proportional part of the blench duty contained in the charter of erection of the Lordship of Paisley, of which the faid teinds were formerly a part, and that at the term of Whitfunday yearly, upon the ground of the faid lands, in name of blench farm, if asked only; AND THESE for all other burden, exaction, demand, or fecular fervice, which can anyways be exacted or required for or from the faid lands, barony, teinds, and others above written, or any part or portion thereof, by any person or persons in all time coming; AND THAT the faid lands, barony, and others, now are in the hands of the faid Prince, immediate lawful superior thereof, by reason of non-entry, through the decease of the said Mrs C, my mother, who died , and fo have upon the remained in the hands of the faid superior for or thereby, in default the space of of my not hitherto profecuting my just right thereto.

THERE-

THEREFORE I befeech your Wisdoms to SERVE and COGNOSCE me nearest and lawful heir of tailzie and provision of the said deceased Mrs C, my mother, in ALL and whole the said lands and barony of C, with the teinds and other heritages particularly before specified and described, and to RETOUR my said service to the chancery, under most part of your seals, as use is.

According to justice and your wisdoms' answer.

On this fervice, which proceeds in the manner afterwards to be explained, a retour is made up, which becomes a warrant for iffuing a precept from Chancery, directed to the Sheriff of the county within which the lands lye. This precept runs in his Majesty's name. and orders infeftment to be given to the heir of entail; on which precept fasine follows, and completes the feudal right of the heir. claim of fervice is the foundation of the whole; the retour runs in the fame terms; the precept from Chancery agrees with the retour; and the fasine copies the precept verbatim. The precept is made out in the Chancery, and the fasine is given by the Sheriff of the county, or his deputies, to which the Sheriff-clerk alone

can act as notary. Examples of these titles would therefore serve only to swell this subject, which has already grown beyond its just proportion. Besides, their forms will be fully understood by a reference to the special retour and service under the title of Services; and, to that part of the present volume, I beg leave to refer.

## III. WHERE THE LANDS HOLD OF A SUBJECT

THE first case to be considered, is that where the precept of sasine in the entail remains unexecuted, to which it is necessary for the heir to make up a title by a general service; and this is precisely the case that has already been considered, where the lands hold of the Crown. In this, as in the former case, the heir of entail, by his general service, carries right to the unexecuted precept, is insest, and obtains a charter of confirmation from the superior.

The charter of confirmation in this case will differ very immaterially from the charter of confirmation in favour of the institute; and, with a reference to that form, I shall shortly

fhortly mark the particulars in which they differ.

Charter of Confirmation by a Subject Superior of an Entail and Instrument of Sasine following thereon, in favour of an Heir acquiring right to the unexecuted Procuratory by a General Service.

Know all men by these presents, that I, J M, Esq. of M, immediate lawful superior of the lands and others underwritten, in consideration of a certain sum of money paid to me by B, son of A, and heir of entail served and retoured to him, whereof I acknowledge the receipt, have ratified and approved, &c.—(here narrate the deed of entail as in the charter of consirmation in savour of the institute)—Together also with the retour of the general service of the said B, as nearest and lawful heir male of tailzie and provision to the said A, his father, under the said deed of entail, expede before

day of , and retoured to his Majesty's chancery, with the instrument of sasing of the lands and others foresaid taken in favour of the said B, in virtue of the precept of sasine in the foresaid disposition and deed of entail, and the retour of the general service aforesaid, which sasine is dated

and recorded

AND THAT

in the whole lands, &c.—(the rest of the form will be in the same terms with the charter of confirmation above referred to.)

The next case, and the most common one, is that where the entail has been rendered real by infestment, and a title is to made up in the person of an heir of entail. This is done by a precept of clare constat, which the superior may either grant voluntarily, without a previous service, or for which he may require a service; for when it is necessary to force an entry, a special service in savour of the heir of entail in the entailed estate is required; the form of which sprocedure will be sufficiently explained under the title of Services. The form of the precept of clare constat will therefore be sufficient for closing this part of our subject.

Precept of Clare Constat in favour of an Heir of Entail.

M, EARL of M, IMMEDIATE LAWFUL SUPERIor of the lands and others underwritten, to
, jointly and feverally, my baillies in that part, to the effect after
fpecified,

specified, specially constituted, greeting: Be-CAUSE, by authentic instruments and documents produced, read, feen, and confidered by me and others in my name, IT CLEARLY APPEARS and is MADE KNOWN, that the deceased B, father of MY LOVITE C, bearer hereof, died last vest and seised as of fee, at the faith and peace of our Sovereign Lord the King, IN ALL and WHOLE (here the lands are particularly described)—AND THAT in virtue of a CHARTER OF RESIGNATION of the faid lands. . GRANTED by the deceased M, dated Earl of M, (at that time the immediate lawful fuperior thereof), to and in favour of the faid deceased B, and the heirs male of his body, whom FAILING, &c. (here the substitution is inserted) - BUT WITH and UNDER the express reservations, conditions, restrictions, provisions, clauses irritant and resolutive, and declarations therein and after specified, which are thereby appointed to be contained in the whole subsequent titles of the faid lands, viz. PROVIDING ALWAYS, as it is by the faid charter of refignation, and by the original entail on which it proceeds, expressly PROVIDED and DE-CLARED (here the whole conditions of the entail are inserted) - WHICH CHARTER OF RESIGNATION contains this declaration, that by containing therein the destination and conditions of the said entail. the faid M Earl of M, grantor thereof, shall not be understood to have given up or renounced

any rights of superiority, competent to him before granting thereof; and, in particular, his right to demand the relief duties payable by a fingular fuccessor, from the heirs of entail who are not heirs of line of the perfons last infest in the faid lands and others, the faid charter being expressly granted by the faid M Earl of M, and accepted of by the faid B, and to be founded on by any future heir of entail, only under this condition, that every right competent to him, his heirs and fuccessors, as superiors of the said lands, before granting thereof, is secured and reserved to him and them, in the same manner, and as fully as if the above destination and conditions had not been herein expressed, and, in particular, the right of demanding from those heirs under the foregoing destination, who are not heirs of line of the perfon last infeft in the said lands and others, the relief duty due by a fingular successor in the said lands, BUT RESERVING ALSO on the other hand to the faid B, and those succeeding under the faid destination, every plea competent to them, not founded on the present charter, by which they may be entitled to force an entry from him or his foresaids, for the relief duty of an heir, as the said charter of refignation, containing therein a precept of fafine, with the usual and necessary claufes, more fully bears; IN VIRTUE ALSO of the IN-STRUMENT OF SASINE following on the precept of fasine in the said charter of resignation, dated

and

. and recorded ; AND THAT the faid C, the only fon of the faid A, is nearest and lawful heir male of tailzie and provision to the faid deceased B his father, in the lands and others before written, in TERMS of the DEED OF ENTAIL, whereon the charter of refignation before recited proceeded, executed by A in favour of himself and the heirs male of his body; whom failing, to the heirs of tailzie above described, as the same, dated , and recorded in the register of tailzies the , and in the books of Council and Session . , more fully bears; AND IN TERMS of the faid charter of refignation, proceeding on the procuratory in the faid deed of entail, and infeftment following thereon—(If there has been a service in favour of the heir, say,—And in terms of the retour of the faid C's general service, as nearest and lawful heir male of tailzie and provision to his said father, under the faid entail dated , and duly retoured to Chancery), -AND THAT he is of lawful age, AND THAT the faid lands and others before specified, with the pertinents, are HELD of me, my heirs and fucceffors, in the faid lands and lordship of M, immediate lawful superiors thereof, IN FEU FARM, fee and heritage, for the yearly payment to me and my faid heirs and fucceffors for the faid lands of, &c. (here express the duties; only, in doubling the entry money for an heir, as the term heir, connected with the destination, may have

a different meaning from what it has in the common case of a precept of clare constat, where there is no entail, it may be proper to express that part of the clause in this way, "DOUBLING the faid feu-duty 66 the first year of the entry of each heir of the faid C, but with the explanation on this point "hereinafter contained;" AND THESE for all other burdens, exactions, questions, demands, or fecular fervices whatever: THEREFORE it is MY WILL. and I hereby DESIRE and REQUIRE you and each of you, conjunctly and feverally, my baillies in that part, that on fight hereof ye pass to the ground of the faid lands respectively and successfively, and there give and Deliver to the faid C, as heir foresaid, HERITABLE STATE and SASINE. real, actual, and corporal possession of ALL and WHOLE the lands and others, with their pertinents, lying bounded and described as aforesaid, BUT AL-WAYS with and under the conditions, restrictions, burdens, limitations, clauses prohibitory, irritant and resolutive, above expressed, and under the refervation of all rights of superiority competent to me, as superior of the said lands, in terms of the clause reserving the rights of the superior thereof, contained in the charter of refignation above referred to, and that in the same manner as if that clause were herein verbatim expressed, as applicable to my faid right, all of which are hereby appointed to be verbatim inferted in the instrument of fasine to follow hereon, as also in the subse-VOL. V. quent

quent investitures of the said lands, AND THAT by delivery to the faid C, or to his attorney in his name, bearer hereof, of earth and stone of the ground of the faid respective lands and others foresaid, with all other symbols necessary; TO BE HELD of me and my foresaids, in manner, and for payment of the feu-duties and other duties and fervices above expressed; AND THIS in noways ve leave undone; which to do I commit to you, and each of you, my bailies in that part forefaid, my full power, by this my precept of fasine directed to you for that effect; saving and reserving always my own rights, and the rights of all others, as accords of law, and, without prejudice to the faid generality, my right to the entry money of fingular fucceffors, as expressed in the said charter of refignation, in manner above narrated. In WITNESS WHEREOF, these presents, confishing of pages, written on stamped this and the vellum, by , ARE SUBSCRIBEDby me; AND I have ordered my seal to be AP-PENDED hereto, AT , the day of , before these witnesses

and

Instrument of Sasine following on the Precept of Sasine, in favour of an Heir of Entail.

In the name of God, amen, &c.—(in common form)—Having and holding in his hands apprecept

PRECEPT of clare constat, of the date, tenor, and contents under-written, MADE and GRANTED by M, Earl of M, immediate lawful superior of the lands and others therein and after mentioned. TO and in FAVOUR of the said C, only son of the deceased B, for infesting him as nearest and lawful heir male of tailzie and provision to his said · deceased father, under the deed of entail hereinafter mentioned, executed by A, in favour of the faid deceased A and the heirs male of his body; whom failing, to the heirs of entail hereinafter described, in ALL and WHOLE the lands and others after described: WHICH PRECEPT of clare constat the faid attorney presented to the faid bailie, and defired him to proceed to the office of bailiary thereby committed to him, by giving fafine to the faid C of the lands and others therein described, in terms thereof; which desire the faid bailie finding to be reasonable, he received the faid precept of clare constat into his hands, and delivered the fame to me, notary public fubscribing, to be read and published to the witnesses present, which I did accordingly, and of which precept of clare constat the tenor follows in these words—(here the precept of clare constat is verbatim inserted, with the subscriptions of the grantor and witnesses)—AFTER READING and PUBLISHING of which precept of clare constat, and precept of fasine therein contained, the said bailie, in virtue thereof, and of the office of bailiary thereby com-

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mitted

ted to him, GAVE and DELIVERED heritable state and fafine, actual, real and corporal possession, to the faid C, of ALL and whose the lands and others above mentioned, in which the faid B died last vest and seised as aforesaid, all lying and described in manner above written, BUT ALWAYS WITH and under the Burdens, provisions, conditions and declarations, clauses prohibitory, irritant and resolutive above expressed, under all and each of which this infeftment is given and received by the faid C, and not otherwise; AND RESERV-ING to the faid fuperior, his heirs and fucceffors, his rights of fuperiority, as expressed in the precept of clare constat herein inferted; AND THAT by DELIVERING to the faid attorney, of earth and stone of the ground of the said lands respectively and successively after others, after the form and tenor of the faid precept of clare constat, in all points; WHEREUPON, &c. in common form.

These examples will sufficiently explain the forms by which the rights under an entail are completed in the person of an heir; and having thus given a view of the entail, and of the forms by which it is completed in the institute and heir of entail, I proceed to the acts of administration of the person in right of the estate.

## CHAP. III.

OF ACTS OF ADMINISTRATION BY THOSE INFEFT UNDER THE ENTAIL.

IT is the great object of the entail to circumscribe the proprietary powers of the person in possession, fince, without a limitation of these powers, the fetters of the entail would foon be wrought off. But while the ordinary powers of a proprietor are denied to the heir of entail, certain powers are given by way of exception from the general limitation; as, for instance, the power of granting leafes of a certain endurance, and of providing for hufbands, widows and children, to a certain extent. The Legislature. too, have found it necessary to enlarge the powers of the proprietors of entailed properties.—I shall not, however, detain the reader long on this subject.

Bond of Provision by a Husband to his Wife, under authority of an Entail, and burdening the Heir of Entail.

4, A, CONSIDERING that the deceafed A, my
T 3 father,

father, did, by deed of entail executed by him, , registered in the register of tailzies and in the books of Session convey and dispone his lands and estate of as therein particularly described, to and in favour of himself; whom failing, to the feveral heirs of tailzie and provision therein described, but with and under the conditions, provisions, restrictions, limitations, clauses irritant and resolutive, therein expressed, and with the powers and faculties thereby conferred; and particularly, it is thereby PROVIDED and DECLARED—(here narrate the clause, under authority of which the heir of entail is permitted to provide his widow)—And now seeing that I stand vested in the said estate, under the said deed of entail, and possessed of the reserved powers thereby conferred on the heirs of entail; AND being defirous of securing to B, my spouse, in case of her furviying me, the liferent annuity which, in terms of the above recited powers, I am entitled to confer on her; THEREFORE, in virtue of the powers vested in me by the said deed of entail, I do hereby BIND and OBLIGE me and the respective heirs of tailzie and provision succeeding to me in the faid entailed property—(you may add " as also my other heirs and successors whatsoever")—to pay to B my spouse, in liferent, during all the days of her life, after my death, in case the shall happen to survive me, a free yearly annuity

emity of Sterling, payable at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first half year's pay--ment thereof at the first term of Whitsunday or Martinmas immediately following my death, for the half year enfuing, and fo forth yearly and and termly thereafter, with a fifth part more of each term's payment of liquidate penalty, in case of failure, and the legal interest of these termily payments from the faid terms of payment, and thereafter during the not payment thereof; PROVID-ING and DECLARING, as it is hereby expressly PROVIDED and DECLARED, in obedience to the directions of the faid entail, that no adjudication to be led against the said entailed estate for the faid liferent annuity shall ever expire, &c. —(These declarations, it is evident, must depend on the terms of the entail; and therefore this part of the deed must be expressed in conformity with the entail: and the whole conditions upon which the provision is permitted to be given will be expressed.)—And it is furter hereby expressly PROVIDED and DECLARED. that the provision hereby constituted in favour of the faid B shall be effectual, and take place only in so far as the same is consistent with the conditions and limitations specified in the said deed of entail, and with the power thereby vested in me; AND if the same shall be found to be disconform to the foresaid deed of entail, it is declared that

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the said provision shall be restricted, and it is accordingly hereby restricted, so as to be precisely conform to the powers given by the faid deed of entail, and no otherwife.—(If the grantor has bound his other heirs, as well as the heir of entail, it will be proper to add here-" AS ALSO DECLAR-ING, that although my heirs whatfoever are hereby bound in payment of the faid liferent annuity, vet as the same is intended ultimately to affect the faid tailzied estate, the heir of entail succeeding thereto shall be bound and obliged to free and relieve my other heirs from payment of the faid annuity.") And I consent to the REGIS-TRATION hereof in the books of Council and Session, or other Judges' books competent, therein to remain for prefervation, and that all execution necessary may pass on a decree to follow hereon, in common form; and, for that purpose, I CONSTITUTE

my procurators, &c. In witness whereof, &c.

Bond of Provision to Younger Children, in virtue of the reserved powers contained in a Deed of Entail.

I, A, lawful fon and heir of tailzie and provision, ferved and retoured to B, my father; WHEREAS by deed of tailzie, bearing date

, executed by the faid deceased B, he thereby conveyed

conveyed and disponed, under the reservations, conditions, provisions, powers and faculties, and clauses prohibitory, irritant and resolutive, therein expressed, to and in favour of the heirs of entail thereby named and described, ALL and WHOLE the lands and estate of , as therein particularly described; AND WHEREAS, by the said deed of entail, the faid B confers on the faid heirs, a power of providing their younger children to fuch a fum as they shall think proper, the same not exceeding the fum of 5000l. Sterling; AND WHEREAS the faid whole estate of has now devolved on me the faid A, by the death of the faid B my father, and that I have completed titles thereto, as required by the faid deed of entail; and feeing it is my intention to fecure, in virtue of the foresaid powers, the sum of 5000l. Sterling, on C, D, and E, younger children procreated of the marriage betwixt me and N, my fpouse, and on such other children as may yet be procreated of the faid marriage; THEREFORE 1 have become BOUND and OBLIGED, as I the faid A do hereby BIND and OBLIGE myself and the heirs fucceeding to me in the faid lands and estate of , and my other heirs and fucceffors whatsoever, to content and pay to the said C, D, and E, the younger children already procreated of the faid marriage, and to the other younger children that may yet be procreated thereof, the faid sum of 5000l. Sterling, equally amongst them,

them, and that at and against the term of Whitfunday or Martinmas next and immediately after their attaining the age of 21 years complete, their marriage, or my death, whichever of these events shall first happen, with a fifth part more of liquidate penalty in case of failure, and the legal interest of the faid principal fum from the forefaid term of Whitfunday or Martinmas, as long as the fame shall remain unpaid: BUT with and under this PRO-VISION and DECLARATION, that any diligence, by adjudication, that shall follow hereon, shall be effectual only as a real fecurity for the principal fum, annualrents, and actual expenses, as the fame shall be accumulated at the date of the adjudication, but shall be no further effectual; nor shall the penalty bear interest, nor the legal reversion of the ajudication ever expire.—(This part of the deed, it is evident, must be regulated by the terms of the entail).—As also declaring, as it is hereby specially PROVIDED and DECLARED, that although my heirs whatfoever are hereby bound in payment of the faid fum of 5000l. Sterling, to the faid younger children, yet as the fame is intended ultimately to affect the faid entailed estate, the heir succeeding thereto shall be bound and obliged to free and relieve my other heirs and fuccessors of and from payment of the said fum; AND DECLARING, that in the event of the death of any of my faid younger children, already procreated or to be procreated, the share falling

falling to him, her, or them, shall fall to and be divided equally amongst the survivors, or belong solely to the survivor; reserving always power to me to divide the foresaid provisions in favour of my said younger children, in such other way and manner as I shall think sit, by a writing under my hand; and I dispense with the delivery of these presents, and declare the same to be a valid and sufficient security, though sound in my repositories after my death undelivered, or in the hands of any third person to whom I may entrust the same. And I consent to the registration hereof (as in the preceding example).

Bond of Corroboration, by an Heir of Entail, of a Bond of Provision executed by his Father.

I, B, Esq. considering that the deceased A, my father, by his bond of provision in favour of his younger children, dated, on a narrative, that by a deed of entail of the lands and estate of, and by the charters and infestments following thereon, sull power and liberty had been reserved to him, as an heir of entail, to provide his younger children with such provisions as he should think sit, the same not exceeding the sum of 2500l. Sterling; and that besides W, his eldest son, he had eleven younger children. He therefore bound and obliged himfels,

felf, and the heir of tailzie succeeding to him in the said lands and estate, to make payment to the said younger children then procreated, or which might thereafter be procreated betwixt him and

his spouse, and who should survive him, equally amongst them, the sum of 2500l. Sterling, at the first term of Whitsunday or Martinmas after his death, with a fifth part more of liquidate expenses in case of failure, with the legal interest of the said sum from and after the said term of payment, during the not payment thereof; DECLARING that the faid bond should be as effectual to his faid younger children, whether male or female, and whether then existing, or to be thereafter procreated of the faid marriage, who should furvive him, as if the name of every younger child, fon or daughter, were therein specially inferted; AND DECLARING ALSO, in case of the death of the faid W, his eldest son, before he arrived at the age of 21 years complete, by which event his next eldest fon would become heir to the said estate, that the fon so succeeding should be excluded from any share of the said 2500l. Sterling, the faid provision of 2500l. Sterling being intended as a fund of provision for his younger children, exclusive of the heir of his body fucceeding to the faid entailed estate; AND with this FURTHER PROVISION, that in case of the death of any of the younger children before their attaining the age of 21 years complete, or without uplifting or disposing of their respective shares of the faid fum of 2500l. Sterling, the share of "the child or children fo deceasing is made to accresce and belong to the furviving younger children, equally amongst them; and his eldest son and heir of tailzie should have no share thereof, as the faid bond of provision, containing fundry other clauses, unnecessary to be here inserted, more fully bears: And further, considering that the faid A my father died in the month of whereby the aforefaid fum of 2500l. became payable at Whitfunday and bore interest from that time, and that there existed fourteen children at the death of the said A, viz. (here they were named), whereof W the eldeft, and G the, fourth fon, are fince dead, so there only now exists eleven of the said children, beside myself, who am become heir in the faid entailed estate, and thereby excluded, as I hereby declare myself excluded from any share of the faid 2500l. Sterling: AND FURTHER, CONSIDERING that the eldest daughter, who is now married, has received payment of her share of the said provision, and J and D have also got their shares, by commissions in the army being purchased for them by me, to a higher extent than the amount of their respective shares, and that the eight remaining younger children, unforisfamiliated, have got no part of their shares of the said general provision, nor of the interest due thereon, since their father's death, excepting

excepting as after mentioned, which interest has, by their mother's economy, been allowed to run up for enlarging their patrimonies, and at Mar-, being fix years and a half's interest, amounts to the fum of 656l. 10s. Sterling: AND it being reasonable that the said interest should be converted into a capital fum, bearing interest from , for the faid children's be-**Martinmas** hoof; and it being inconvenient for me, in the present state of my affairs, to lend out the same on a security in their names, I THEREFORE, in CORROBORATION of the faid bond of provision, and without hurt or prejudice thereto in any fort, BIND and OBLIGE me, my heirs, executors and 'fucceffors whomfoever, fucceeding to me in the faid lands and estate of , or any other tailzied subjects, to make payment to the faid J C, &c. (the eight younger children were named)-my brothers and fifters, equally amongst them, share and share alike, (and, failing any of them by death, before their attaining the age of 21 years complete, the deceafer's share to accrue and belong to the furvivors of them, and the other younger children who shall be found to have interest in the said 2500l.) of the foresaid sum of 656l. 10s. Sterling, being 82l. 1s. 3d. Sterling to each of the foresaid younger children, and that against the term of Martinmas next to come, in this present year, with a fifth part more of liquidate penalty in case of failure, together with

with the due and legal interest of the said sum of 656l. 10s. Sterling, from the term of Martinmas last, to the foresaid term of payment, and yearly, termly, and proportionally thereafter, during the not payment thereof; DECLARING ALWAYS, that I have already, by the hands of my agent and cashier, paid to the said my mother, the year's interest of the said sum, which fell due from Martinmas Martinmas last, for behoof of my faid younger brothers and fifters: AND I CONSENT to the RE-GISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning, on fix days charge, and all other execution necessary, may follow, on a decree to be interponed thereto, in common form; and for that purpose constitute

MY PROCURA-

tors, &c. In witness whereof, &c.

The heir of entail, in the course of his management, will have occasion to grant the leases, either under the entail, or under the act of Parliament. Under the same act, it may be necessary for him to grant building leases, enter into excambions with neighbouring proprietors, or to grant conveyances to vasials of their superiorities. These deeds will proceed on a narrative of the entail, or of the statute;

and the powers exercised will be bounded by the terms of the clause under which they are executed. In all such deeds, it may be prudent to insert a clause, declaring that they shall be effectual to the extent only of the powers conferred on the grantor by the entail or slatute.

I proceed, then, to the last head of this subject, that of Actions connected with the Entail.

## ACTIONS CONNECTED WITH THE ENTAIL.

Summons of Declarator of Irritancy at the Instance of a Posterior Heir of Entail against the Heir in Possession.

George, &c. Our lovite A, THAT the deceased B, by his bond of tailzie, dated , registered in the register of tailzies , and in the books of Session , resigned, surrendered, upgave and overgave, all and whole the lands and others underwritten, viz.—(here insert the lands contained in the tailzie)—in the hands of his immediate lawful superiors, in favour and for new infestment of the same, to be made and granted to the said B, and the seismale lawfully procreated or to be procreated of his

his body; whom failing, to the pursuer and the other heirs and substitutes particularly mentioned in the faid deed of entail; and that always with and under the express burdens, restrictions, conditions, provisions, refervations, limitations and irritancies therein contained; AND PARTICULAR-Ly, with and under this restriction and limitation. that it should not be lawful to any of the heirs of tailzie to fell, alienate, or dispone, redeemably or irredeemably, dilapidate or put away the faid lands or estate, or any part thereof, to any person or persons, for any cause or occasion, whether onerous or gratuitous, nor to contract or take on debts, nor grant wadfets for the same, nor annualrents or annuities furth of the faid lands, nor do any other act or deed, directly or indirectly, by which the faid lands, or any part thereof, might be adjudged, affected, burdened, or evicted; and under this provision, as it is thereby specially provided and declared, 'That if it shall happen any of the heirs of entail above mentioned to contravene the provisions and limitations herein written, or any of them, then, and in that case, all such acts and deeds of contravention are not only declared void and null to all intents and purposes, in the same manner as if they had never been granted, but the heirs 6 so contravening shall, ipso facto, amit and forfeit all right to the lands and estate above mentioned; and the fame, and the right VOL: V. therete

" thereto, shall accresce and belong to the next " heir of tailzie substituted to the contravener "who shall happen to be alive at the time, to whom it shall be lawful to serve heir to the im-" mediate predecessor of the contravener, and to establish his right by reduction and declarator, or by adjudication, or by any other method as law directs: nor shall it be competent to the e person who contravenes, and incurs an irritancy, to purge the fame when once incurred. YET TRUE IT IS, that C, only fon of the faid B, after making up titles to the faid estate, and posfessing the same for some time under the foresaid tailzie as one of the heirs therein called, has, inviolation of the conditions, provisions, restrictions. limitations, clauses irritant, and others contained in the faid deed of tailzie, SOLD and DISPONED the whole or great part of the lands and others therein contained, and after described, to the several persons after written, viz.—(here insert the particular portions of the lands disponed, and the rights whereby the contravener has conveyed them away;) -and that the purfuer, being one of the heirs substitutes called by the foresaid deed of tailzie to the fuccession of the lands and others therein contained, is entitled to prevent those alienations from taking effect, and has good and undoubted right to profecute the action of declarator of irritancy after mentioned: THEREFORE, it OUGHT and should be found and DECLARED, by decree

of the Lords of our Council and Session, that the faid C has fold and disponed the lands and others above specified to the several persons before mentioned, contrary to the limitations of the forefaid deed of entail; and has thereby incurred an irritancy of, and amitted, lost and forfeited, his right, title and interest, to the whole entailed lands and others mentioned in the faid deed of entail; and that his right, title and interest therein, is now, and shall, in all time coming, be void and extinct; and that the faid lands and others. with the rents, mails and duties of the fame. have now fallen, devolved and accrefced, and do now belong to the purfuer as the next heir appointed to succeed by the said deed of entail, and that free and disburdened of the foresaid dispofitions and infeftments, and all other acts done and deeds granted by the faid C, contrary to the terms of the faid deed of entail, in the fame manner, and as fully and freely in every respect, as if the faid defender had never been in the possession of the faid estate; after the form and tenor of the faid deed of entail, and laws and daily practice of · Scotland, used and observed in the like cases in all points, as is alleged. Our will is, &c.

Summons at the Instance of an Heir of Entail in Possession, for ascertaining the Amount of the Expenses of Improvements made by him.

GEORGE, &c. WHEREAS it is humbly meant and shown to us by our lovite A, proprietor of the entailed estate of C, lying in the parish of D, and sheriffdom of E, THAT by an act of Parliament passed in the 10th year of our reign, c. 51, intituled, 'An act for encouraging the improvement of lands in Scotland, held under fettle-' ments of strict entail, ' it is, inter alia, enacted, That every proprietor of an entailed estate whoe lays out money in enclosing, planting, or draining, or in erecting farm-houses and offices for the fame, shall be a creditor to the succeeding heirs of entail for three fourths of the money fo laid out, provided that the claim against the fucceeding heir shall not exceed four years. free rent of the entailed estate as at the first term of Whitsunday after the death of the heir who expended the money: That notice 6 of the intended improvements be made in writing, three months at least before they are begun, to the next heir after the heirs of the " proprietor's body; or, if that heir be not within Great Britain or Ireland, to his nearest relation by the father, or to his factor or attorney, and " a copy of the notice lodged with the sheriff or

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fewart clerk of the county where the lands Lye; and that, annually, within four months after Martinmas, an account of the fums ex-\* pended during the year preceding that term, with the vouchers, be lodged with the sheriff or stewart clerk: And it is enacted, that the \* executors or assignees of the heir who expended the fame, may, after one year from his death, 6 demand payment from the fucceeding heir. with interest from the term when that heir's ' right to the rents commenced.' And by a posterior clause of the same statute, it is enacted, 4 That any heir of entail, after having completed the improvement of all or any part of the estate, may bring an action before the Court of Session, or the Sheriff, in which he shall call the heir next entitled to succeed after the 4 heirs of his own body, for afcertaining the amount of the charge against the succeeding ' heirs of entail.' THAT the pursuer has, during his possession of the said entailed estate, laid out in enclosing, planting, and erecting farmhouses and offices thereon, the sum of 1200l. Sterling, conform to accounts and vouchers thereof lodged with the sheriff-clerk of the said sheriffdom of E, within which the faid entailed estate lyes, in terms of the statute before mentioned; intimation of which improvements was duly made in writing to F, the next heir of entail entitled to fucceed after the heirs of the pursuer's body,  $\mathbf{U}_{3}$ conform

conform to instruments taken thereupon in the hands of G, notary public, dated a copy of which intimation was likewise lodged with the faid sheriff clerk of the faid county of E, in terms of the statute; as extracts of the said accounts, vouchers and intimation, all under the hands of the faid sheriff-clerk, more fully bear: THAT the purfuer being defirous that the amount of the charge against the succeeding heirs of entail, for the aforesaid improvements made by him, should be ascertained in terms of the aforesaid flatute: Therefore, it ought and should be FOUND and DECLARED, by decree of the Lords of our Council and Session, that the expenses laid out by the pursuer in enclosing, planting, and erecting farm-houses and offices on the faid entailed estate, previous to the day of amount to the foresaid sum of 1200l. Sterling; and that the faid F, and, failing him, the next heir who is entitled to succeed after the heirs of the pursuer's body, shall be liable to the heirs, executors, or affignees of the purfuer, in 900l. Sterling, being three fourth parts of the foresaid fum of 1200l., with interest of the said gool. Sterling from the term when the faid F, or other heir next entitled to fucceed after the heirs of the pursuer's body, their right to the rents of the forefaid lands shall commence; conform to the foresaid act of Parliament, accounts and vouchers libelled, and laws and daily practice of Scotland uled

ouled and observed in the like cases, in all points, as is alleged. Our will is, &c.

Summons at the instance of the Executors of an Heir of Entail, against the Heir succeeding in the Estate, for the Expenses laid out in Improvements upon the Act of the 10th of his present Majesty.

GEORGE, &c. WHEREAS it is humbly meant and shown to us by our lovite A, fister-german and executor qua nearest in kin decerned and confirmed to the deceased B, conform to her confirmed testament expede before the Commissaries day of : THAT by an . the act of Parliament passed in the 10th year of our reign, c. 51., entitled, ' An act for encouraging 4 the improvement of lands in Scotland held un-" der settlements of strict entail, ' it is inter alia enacted, 'That every proprietor of an entailed estate who lays out money in enclosing, planting or draining, or in erecting farm houses, and offices for the same, shall be a creditor to the fucceeding heirs of entail for three-fourths of the money so laid out, provided that the claim s against the succeeding helt shall not exceed four year's free rent of the entailed estate, as at the first term of Whitsunday after the death of the heir who expended the money; and that the executors or assigns of the heir who U 4 'expended

expended the same, may, after one year from his death, demand payment from the succeed-' ing heir, with interest from the term when that ' heir's right to the rents commenced; and, in case of non-payment, sue him before the Court f of Seffion therefor. And by a posterior clause of the faid statute, it is enacted, 'That if any "heir of entail shall refuse to pay the money reguired of him for improvements, and if decree 's shall be recovered for the full sum demanded. then the defender shall be liable in full costs of ' fuit. ' THAT the faid B, who possessed the entailed estate of C as heir of entail therein, did, during his possession, lay out, in enclosing, planting, and erecting farm houses and offices thereon, the fum of 1200l. Sterling, conform to accounts and vouchers thereof lodged with the sheriff-clerk of the sheriffdom of D within which the saidentailed estate lies, in terms of the statute before mentioned; intimation of which improvements was previously made in writing to E, the next heir of entail after the heirs of the faid B's body, conform to instruments taken thereupon in the hands of F notary public, dated , a copy of which intimation was likewise lodged with the Sheriffclerk of the faid county of D in terms of the statute; as extracts of the said accounts, vouchers and intimation, under the faid Sheriff-clerk's hand, more fully bear: AND ALTHOUGH the pursuer, as executor foresaid, has often defired and required

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the faid E, who succeeded the said B as heir of entail in the foresaid estate of C to make payment to her, in terms of the statute, of three-fourth parts of the foresaid sum laid out by the said B in improvements upon the faid estate, with interest thereof from the term of when his right to the rents thereof commenced, YET he refuses, at least delays so to do: THERE-FORE, the faid E OUGHT and SHOULD be DE-CERNED and ORBAINED, by decree of the Lords of our Council and Session, to make payment to the faid pursuer, as executor foresaid, of the sum of gool. Sterling, three fourth parts of the forefaid fum of 1200l. Sterling, laid out by the faid deceased B in improvements on the said estate of C, and interest of the said gool. Sterling from the when the faid E's forefaid term of right to the rents of the faid estate commenced. and also of Sterling as the expenses of this process, and of extracting the decree to follow hereupon; conform to the foresaid act of Parliament, accounts and vouchers before mentioned, and laws and practice of Scotland used and obferved in the like cases, in all points, as is alleged. OUR WILL IS, &c.

Summons at the instance of the Executor of an Heir of Entail, against the Heir succeeding in the Estate, for the Expenses laid out in building a Mansion-house, upon the Act of the 10th of his present Majesty.

GEORGE, &c. WHEREAS it is humbly meant and shown to us by our lovite A, sister-german and executor qua nearest in kin decerned and confirmed to the deceased B, conform to his confirmed testament expede before the Commissaries of , THAT by an act of Parday of the liament passed in the 10th year of our reign, c. 51, entitled, 'An act for encouraging the improvee ment of lands in Scotland held under settlee ments of strict entail, ' it is inter alia enacted, ' THAT every heir of entail who lays out money in building or repairing a manfion house or offices upon his estate, or in adding to them, fhall be a creditor to the next fucceeding heir of entail for three fourths of the money ex-' pended by him, provided that the fums fo laid out shall not be effectual to constitute a claim s against the succeeding heir for more than two vears' free rent of the estate, as at the first term of Whitsunday after the death of the heir who expended the money claimed; and that those in the right of the claim on account of that

that expense, may demand payment from the fucceeding heir after one year from the death of him who expended the money, with interest from the term at which the heir's right to the rents commenced; and in default of payment within three months of fuch requisition, may fue the heir therefor before the Court of Sef-' fion.' THAT by another clause of the same statute, it is enacted, 'That, if any heir of entail fhall refuse to pay the money required of him for improvements, and if decree shall be recovered for the full fum demanded, then the defender shall be liable in full costs of fuit; which rule is declared likewise to take place with regard to the money laid out in building or repairing the mansion-house. THAT the said B. who possessed the entailed estate of C, as heir of entail therein, did, during his possession, lay out the fum of 1200l. Sterling, in building a manfion-house and offices thereon, conform to accounts and vouchers thereof, lodged with the sheriff-clerk of the sheriffdom of E, within which the faid entailed estate lyes, in terms of the statute before mentioned; intimation being previoully made in writing to E, the next heir of entail after the heirs of the faid B's body, conform to instruments taken thereupon in the hands of F notary-public, dated ; a copy of which intimation was likewise lodged with the fheriff-clerk of the faid county of D in terms of the

the statute; as extracts of the said accounts, vouchers, and intimation under the faid sheriffclerk's hand more fully bears. AND ALTHOUGH the pursuer, as executor foresaid, has often defired and required the said E, who succeeded the faid B as heir of entail in the foresaid estate of C, to make payment to her, in terms of the statute, of three fourth parts of the foresaid sum laid out by the said B in building the said mansionhouse and offices upon the said estate, with interest thereof from the term of when his right to the rents thereof commenced, ver herefuses, at least delays so to do: THEREFORE the faid E ought and should be DECERNED and or-DAINED, by decree of the Lords of our Council and Session, to make payment to the faid pursuer as executor foresaid, of the sum of gool. Sterling, being three fourth parts of the foresaid sum of 1200l. Sterling laid out by the faid deceased B, in building the faid mansion-house and offices on the faid estate of C; and interest of the faid gool. Sterling from the forefaid term of the faid E's right to the rents of the faid estate. commenced; and also of Sterling, as the expenses of this process, and of extracting the decree to follow hereupon; conform to the foresaid act of Parliament, accounts and vouchers before mentioned, and laws and practice of Scotland used and observed in the like cases, in all points, as is alleged. OUR WILL IS, &c.

Redeemable

#### Redeemable Bond of Annuity over an Entailed Estate,

I, A, heritable proprietor of the lands and heritages after mentioned, grant me to have borrowed and received from B the fum of Sterling, as the purchase money of the annuity after mentioned: In consideration whereof, I hereby BIND and OBLIGE myself, and my heirs, executors, and fucceffors whatfoever, without the benefit of discussion, to make payment to the said B, and his heirs, successors and assignees, of a free yearly annuity or annualrent charge of Sterling, and that yearly, and each year during my natural life, and while the faid annuity shall remain unredeemed by me; and that by equal half yearly payments, on the day of in each year; beand day of ginning the first payment on the day of , in the year , to answer the first half year's annuity; and the next payment of , on the day of thereafter, to answer the next half year's annuity; -and fo forth by the same payments, at the said day of , and day of in each subsequent year during my life, and while the faid annuity is unredeemed; and a proportional part of the faid annuity or yearly fum from the time which may clapse between the last half

half yearly payment, and the day of my decease; together with a fifth part more of each term's payment of liquidate penalty and expenses in case of failure, and the due and lawful interest of the faid annuity, from the respective terms of payment thereof during the not payment. THER, for greater fecurity to the faid B, I the faid A have sold, ALIENATED and DISPONED, as I do, by these presents, but with and under the express provisions and declarations herein after inserted, and no otherwise, sell, alienate and DISPONE, to and in favour of the faid B, and his heirs, fuccessors or assignees, ALL and WHOLE the lands and barony of D-(Here describe the lands from the title-deeds)—with the whole parts, pendicles, and pertinents of the faid lands, barony, and other heritages before disponed, together with all right, title and interest, which I the said A had or may have in and to the lands and heritages aforesaid; AND THAT FOR and in real security to the faid B and his foresaids, of the said annuity of

Sterling yearly, and each year during my natural life, and while the faid annuity remains unredeemed by me, and that by equal half yearly payments on the day of , and

day of in each year, beginning the first payment on the day of in the year , to answer the first half year's annuity; and the next payment of Sterling, on the day of thereaster, to answer

answer the next half year's annuity; and so forth by the same payments at the faid day of day of in each subsequent year during my life, and while the faid annuity is unredeemed; and a proportional part of the faid annuity or yearly fum, from the time which may elapse between the last half yearly payment and the day of my decease; together also with one fifth part more of each term's payment in name of liquidated penalty and expenses in case of failure, with the due and lawful interest of the said annuity from the respective terms of payment during the not-payment: DE-CLARING ALWAY'S, as it is hereby expressly PRO-VIDED and DECLARED, that as I hold and enjoy the foresaid lands and estate under a settlement of strict entail executed by the deceased E, whereby I am prohibited from alienating or incumbering the faid lands and estate to the prejudice of the subsequent heirs of tailzie, THEREFORE, the said B, by acceptance of these presents, hereby AGREES. and BINDs himself and his foresaids, that no adjudication, or other process or diligence, to follow or to be used upon this disposition and security, and infeftment to follow hereon, at their instance, shall affect the lands and estate hereby disponed, or the rents or duties thereof, except during my life; nor shall the said obligation, disposition and infeftment, or any process, diligence, and execution to follow thereon, anywife affect, or operate to infringe, the right of any other perfon or persons when they succeed, or become entitled to fucceed to me, as heirs of tailzie in the faid lands and estates, excepting in so far as they may otherwise represent me; but this disposition in fecurity, and infeftment to follow hereon, and the assignation to the rents and duties after inserted, and all process, diligence, and execution following upon the same, or upon the personal obligation granted by me as aforesaid, shall, at and immediately upon my decease, become, ipso facto, void and null as against the said lands and estates, and the heir of tailzie fucceeding thereto, and the rents thereof, other than the rents which may be then due, and which would belong to my executors, if not assigned by me: In which lands and heritages in fecurity for the purposes aforesaid, and under the provisions and declarations above expressed, I BIND and OBLIGE myself, upon my own charges, duly and fufficiently to INFEFT and SEISE the faid B and his foresaids, by two several infestments and manners of holding, the one thereof to be holden of me, in free blench, for payment of a penny Scots money on the ground of the faid lands, at Whitfunday yearly, if asked only; and the other from me and my foresaids, of our immediate lawful superiors, in the same way as I hold or may hold the same myself, and that by confirmation: And I BIND and OBLIGE myself to grant all other deeds that may be necessary effectually to vest the foresaid lands and heritages in the persons of the faid B and his foresaids in security,

rity, and with the declarations aforesaid, containing procuratories of refignation, and all other clauses usual; and also to warrant the foresaid lands and heritages, and this conveyance thereof in fecurity, and the infeftment to follow hereon, to be free, fafe and fure, to the faid B and his foresaids, at all hands; but always with and under the provisions and declarations before inferted: And further, I hereby, Assign, convey and MAKE OVER, to the faid B and his foresaids, the rents and duties of the foresaid lands and heritages, from and fince the term of and for all the years and terms thereafter during my life and the not redemption; AND ALSO the writs, rights, titles and evidents, and tacks or leases, made or to be made of the said lands and other heritages aforefaid, with full power to the faid B and his foresaids to enter into possession, and levy and receive the faid rents and profits during my life, as in my stead and place, to the effect that he and his foresaids may be enabled to apply the faid rents and profits, in the first place, to the payment of the faid annuity, in case I shall fail in the regular payment thereof, and all the charges

may be put to in receiving the same and indemnifying himself, he and his foresaids always rendering the furplus, if any be, to me; DE-CLARING, PARTICULARLY, that he may enter upon fuch parts of the foresaid lands and others only as he shall think proper; and that he shall

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be entitled to deduct the falaries of factors, or receivers, to be appointed by him, and all other reasonable charges; and that he shall not be liable to do exact diligence, and shall be liable only for the actual intromissions of himself and his factors: and that he may quit and resume possession at pleasure: Which assignation I likewise BIND and OBLIGE myself to warrant to the said B and his foresaids, from all facts or deeds done, or to be done, by me, prejudicial hereto, and to his right under the fame: And further declaring, that the foresaid personal obligation, and the real right under these presents, and infestment or diligence to follow hereon, shall nowife be held as inconsistent, but it shall be in the power of the creditor and his forefaids to operate on any or upon the whole of the rights in their persons at pleasure, in order to recover and make effectual what may be due from time to time: AND, LAST-LY, I hereby BIND and OBLIGE myself to make the writs and evidents of the lands and heritages aforesaid, and also the tacks or leases thereof, furthcoming to the faid B and his forefaids, on all occasions necessary. AND I consent to the registration hereof in the books of Council and Seffion, or any other Judges' books competent, therein to remain for preservation; and, if needful, that letters of horning, on fix days' charge, and all other execution competent, may pass on a decree to be interponed hereto, in common form; for

for which purpole I constitute

iny procurators, &c.

Moreover, that the said B and his foresaids may be the more readily inseft and seised in the lands and other heritages disponed in security as aforesaid, for the purposes, to be holden in manner, and under the provisions and declarations before specified, I the said A hereby desire and require you

and each of you, conjunctly and feverally, my baillies in that part, to this effect specially constituted, that, on fight hereof, ye pass to the ground of the lands and others herein before described, respectively and successively, and there give and deliver to the faid B and his foresaids, heritable state and fafine, real, actual, and corporal poffession, of ALE and WHOLE the foresaid lands and others hereby disponed in security as aforesaid, lying and described as aforesaid, and here held as repeated brevitatis causa; AND that for and in real fecurity to the faid B, and his heirs and assignees, of the faid annuity of Sterling yearly, and each year during my natural life, and while the faid annuity remains unredeemed by me; and that by equal half yearly payments on the day of day of in each

year, beginning the first payment of on the day of in the year, to answer the first half year's annuity; and the next payment on the day of

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thereafter, to answer the next half year's annuity; and so forth by the same payments at the said

, and day of . day of in each subsequent year during my life, and while the faid annuity is unredeemed, and a proportional part of the faid annuity or yearly fum, from the time which may elapse between the last half yearly payment, and the day of my decease; together also with a fifth part more of each term's payment in name of liquidate penalty and expenses, in case of failure; and the due and lawful interest of the said annuities from the respective terms of payment thereof, during the not payment; but always with and under the provisions and declarations contained in the preceding disposition in security, and no otherwise; AND that by delivery to the faid B and his foresaids, or to their certain attorney or attornies, in their names, bearers hereof, of earth and stone of the ground of the foresid lands and heritages, a penny money for the faid annuity, and any other symbols that may be ufual and requisite; and this in noways ye leave The which to do, I hereby commit to undone. you, and each of you, my faid baillies, full power by this my precept of fasine, directed to you for that effect. In witness whereos, &c.

#### II. OF MARRIAGE SETTLEMENTS.

We come now to a subject peculiarly interesting to the conveyancer, since, to entitle him to put his hand to the framing of a marriage contract, it is not a mere knowledge of the form of the deed that is sufficient, but a deep and extensive knowledge of his profession, that can enable him to perform his duty with safety to his employer, and with ease and comfort to himself.

He must know the rights which the parties enjoy at common law in the estates of each other, and how far these rights may be renounced, or are renounced by accepting of conventional provisions;—the rights arising to the children in the estates of their parents, and the power of control competent to the parents over these rights. He must know the essect of the destination of the heritable estate to the husband and wife, and their heirs, according to the different forms of destination shat are used, with the circumstances which, in the common case, will affect the meaning

of fuch destinations. He must know the effect produced by taking the estate to the heir male of the marriage; the right which it establishes in the heir; the power which it leaves in the parent; the change produced by giving it to the heirs and children of the marriage, with the power of disposal, which the father is still understood to have referved to He must know the effect of the himself. marriage fettlement on the previous fettlements of the husband, or on fettlements which a fecond marriage may render necessary. must know on what circumstances the vesting of provisions in the children depends, and provide accordingly; on what grounds the provisions of the children vest a right of credit, that entitles them to rank with the creditors of the parent, or finks them into mere legatees. He must know the effect which a new provision to a wife or child will produce on their previous legal or conventional provisions, and the powers of the parent to annex conditions. to fuch provisions. It is from a knowledge of these, and of many other general questions connected with this subject, joined to a knowledge of the circumstances and situation of the parties, their future prospects and chance of

new equilitions, that the conveyancer will be enabled to advise and direct his employer in the arrangement of those settlements which are to be the foundation of a new family; and on the wisdom and prudence of which the happiness of the parents, as well as the success of the children, may materially depend.

That this is no imaginary view, no idle speculation on the duties of the conveyancer, every man of experience will readily admit; and the student ought to be aware, in entering upon the consideration of this department, what the points of study are, to which his attention ought to be directed. It is not here he can expect to meet with information on these points: But the forms of marriage settlements shall be given in such a shape, as to admit of being easily connected with the knowledge he will find it necessary to acquire.

With this view, the subject will be arranged under the following heads-

- I. Of the Form of the Contract of Mar-riage.
  - II. Of relative Deeds.

#### CHAP. L.

#### OF THE CONTRACT OF MARRIAGE.

In order to give the form of the contract fully, it will be necessary to bring the subject under the following heads—

- 1. What relates to the form of the contract of marriage.
  - 2. Deeds connected with the contract.
- 3. The form of its diffolution during the lives of the parties.

# SECT. I. OF THE FORM OF THE MARRIAGE CONTRACT.

In this section, it is proposed to treat fully of the form of the marriage contract, from the simpler to the more complex forms; and our first view will, of course, include those cases where there is no heritage. The next division will include those contracts where a landed estate is to be settled, and so rising up

to the contracts of the greatest importance; where the parties are possessed of great estates, as well as of the chance of new successions; where both parties are possessed of estates, and where the estates are held under entails. In these examples, most of the varieties in the clauses of this deed will have been presented to the reader.

I. CONTRACT OF MARRIAGE, where neither of the Parties are possessed of Heritable Property.

I shall endeavour to fill up this head by the following examples.

EXAMPLE I.—Contract of Marriage providing a sum to the Husband and Wife in conjunct fee and liferent, and to the Children in fee, with a power of division of the fund—a conveyance by the wife of her tocher and provision for the continuance of the provisions, notwithstanding the dissolution of the marriage within year and day, &c.; and the nomination of persons at whose instance diligence may proceed.

It is contracted and matrimonially agreed upon betwirt the parties following, viz. A, ON THE ONE PART, and B, daughter of the de-, ON THE OTHER ceased PART, in manner following; THAT IS TO SAY, the faid parties have accepted, and do hereby accept of each other for lawful spouses, and promise to folemnize without delay the bond of marriage. In contemplation of which marriage, and in confideration of the tocher after mentioned, the faid A BINDS and OBLIGES himself. his heirs, executors and fucceffors whomfoever, betwixt and day of next, to fecure the fum of 3000l. Sterling on good and fufficient fecurity, heritable or moveable, or in the purchase of lands or houses, the rights and titles whereof shall be taken to himself in trust, for his own liferent use; whom failing, to B, for her liferent use, and to the children to be procreated betwixt them in fee; whom failing, to the heirs or assignees of the said A; AND the said A further gives and dispones to the faid B, in case she shall survive him, the half of the household furniture that shall belong to him at the time of his death, under this condition, that it shall be lawful to the children of the faid marriage to redeem from the faid B her half of the faid household furniture, by payment to her, at the first Whitfunday or Martinmas after the death of the faid A, of the fum of 15cl. Sterling; BUT DE-CLARING, that in the event of the failure to redeem the faid furniture, at or within the term above

above specified for the payment of the said redemption money, the power of redemption shall thereupon terminate; which provisions in fayour of the faid B she hereby accepts of in full. of all terce, share of moveables and goods in communion, and every thing that she, jure relictae, or otherways, may be entitled to demand on the death of her husband, should she survive him, or which it may be competent for her nearest of kin to demand from the faid A, in case of her predecease; And further, it is hereby expressly PROVIDED and DECLARED, that it shall be in the power of the faid A to divide and proportion, as he shall think proper, amongst the children to be procreated of the faid marriage, the fee of the faid fum of 3000l.; and in case of his death, without his having exercifed this power, the faid B, in the event of her furviving him, shall posfess the same power while she continues unmarried; BUT failing of any division in manner forefaid, the fee of the faid fum shall, on the death of the faid B, divide equally amongst the faid children, share and share alike; which provisions in favour of the child or children of the faid marriage, are hereby DECLARED to be in full fatisfaction to him, her or them, of all bairns' part of gear, legitim, portion natural, executry, and everything else they can claim through the decease of the faid A, their father, leaving any further provision to his good will alone: For which causes,

and on the other part, the faid B hereby As-SIGNS and DISPONES to the faid A, his heirs, executors and assignees whatsoever, ALL and WHOLE the fum of 1000l. Sterling of principal, contained in an heritable bond, dated and granted by to her, with the interest due thereon, and penalties thereby due in case of failure, with the faid bond, fafine following thereon, and all that has or may follow thereupon; AND it is hereby PROVIDED and DECLARED, that although this present marriage shall happen to dissolve within year and day, and without a living child procreated of the marriage, yet the whole provisions herein conceived in favour of either of the faid parties shall subsist and take effect, any law or practice to the contrary notwithstanding; AND it is ALSO hereby AGREED, that all action and execution for implement of the provisions in favour of the faid B, or of the children of the faid marriage, shall pass at the instance of all or either of the persons afternamed, viz. C, D, E or F, or the eldest sons of either of them. AND BOTH parties consent to the registration hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on fix days charge, and all other execution necessary, may follow on a decree to be interponed hereto: and, for that purpose, they constitute

THEIR PROCURATORS, &c.

In witness whereof, &c.

EXAMPLE

EXAMPLE II.—Providing a jointure to the wife. restricted in certain events; providing also the furniture under a restriction and power of redeeming it by payment of a sum of money; the conquest during the marriage, provided to the husband and wife in security to her of her jointure, and to the children of the marriage in fee; an obligation to provide the children from the funds of the father, if the conquest be insufficient for that purpose in a sum equal to the wife's tocher; a power to the husband to divide the provisions amongst the children. no heir male, a settlement and provision to the daughters. In case of no heirs, a proportion of the tocher to return to the wife. The provisions under the contract to be in full of the legal provisions to the widow and children. conditions to receive effect, though the marriage dissolve within year and day. Certain persons appointed, at whose instance execution may proceed for enforcing the conditions of the deed.

IT is CONTRACTED, AGREED, and MATRIMO-NIALLY ENDED, between the parties following, viz. A, on the one part, and B, with confent of C, her brother, on the other part, in manner following; that is to say, the faid A and B have accepted, and hereby accept of each other for lawful spouses, and hereby bind and oblige themselves instantly to solemnize their marriage. In contemplation of which marriage, and in confideration of the tocher after mentioned, the faid A BINDS and OBLIGES himself, his heirs, executors and successors whatever, to make payment to the faid B, during all the days of her lifetime, in case she shall survive him, of a free liferent annuity of 2001., payable within the city of Edinburgh, at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first half year's payment at the first term of Whitfunday or Martinmas after the death of the faid A, and fo forth termly thereafter during her lifetime, with the fum of 201. Sterling for each term's failure; WITH this CONDITION and PROVISION ALWAYS, as it is hereby PROVIDED and DECLARED, that in case there shall be a child or children of the faid marriage, and that during the existence of such child or children, or their issue, the said B shall marry a second husband, then, and in these joint cases, the foresaid liferent annuity shall be restricted to a liferent annuity of 100l. Sterling, from and after the first Whitsunday or Martinmas after the faid fecond marriage; BUT in case the issue of this marriage, and their issue, shall thereafter fail, THEN her said annuity shall increase to its original amount of 2001. Sterling; AND FURTHER, the faid A, under the restriction and power of redemption herein expressed, PROVIDES and DISPONES to the faid B his promifed

miled spoule, in case she shall survive him, and there be no children of the marriage existing at the diffolution thereof, the whole household furniture and plenishing which shall belong to him at the time of his death, including filver plate and heirship moveables; BUT under this RESTRIC-TION, that in case she survive him, and there be children, one or more, of this marriage existing at the diffolution thereof, then a joint and equal half only of fuch furniture and plenishing, including as aforefaid, shall belong to the said B: which furniture, in the respective events above fpecified, under the power of redemption after mentioned, the faid A obliges himself, his heirs and fuccessors, to warrant to her, free from all debts and claims whatever; BUT PROVIDING ALways, as it is hereby provided and declared, that the faid whole or half of the faid furniture and plenishing, including as aforesaid, shall be RE-DEEMABLE from the faid B by the executor or executors of the faid A, or his affignees to the faid household furniture, by payment to her of 300l. for the whole, if her right, in terms of the above provision, shall extend thereto, or 150l. Sterling for the half thereof, if her right shall extend no farther; AND THAT at any time within fix months after the death of the said A; AND DECLARING, that unless such redemption shall be made within the faid fix months, then the faid whole and half of the faid furniture and plenish-

ing, accordingly, as her right may be, shall, by the mere lapse of time, remain her absolute and irredeemable property, without the necessity of any declarator or other form whatever on her part. As also, in contemplation of the faid marriage, and in order to establish provisions for the children thereof, the faid A BINDS and OB-LIGES him to have in readiness, of his own proper means and estate, the sum of 2000l. Sterling, and to bestow and lend out the same with the fum of 2000l. Sterling of tocher after mentioned, extending together to the sum of 4000l. Sterling, upon lands, or good fecurities bearing interest, and to take the rights and securities thereof to and in favour of himself and the said B, his promised spouse, in conjunct fee and liferent, for fecurity to her allenarly of the liferent provided to her in manner above mentioned, but to be restricted in the event foresaid, and to the child or children to be procreated betwixt them in fee; which failing, to the faid A, his heirs and assignees whatsoever: Declaring always, as it is hereby PROVIDED and DECLARED, that notwithstanding the fee of the forefaid sum is provided to the children of the faid marriage in general, it shall nevertheless be in the power of the said A, by a writing under his hand, at any time in his lifetime, and even on deathbed, to divide and proportion the same amongst the said children, as he shall see proper; AND, failing such division, the said.

fum

fum shall divide equally amongst them: AND it is hereby specially PROVIDED and DECLARED, that in case the said B shall survive the said A, and that there shall be no child of the said marriage existing at the time of its dissolution, or, though existing at the dissolution of the marriage, if they shall predecease the said B before any of them shall have attained the age of 14 years; THEN, , and in these joint events, the sum of 500l., out of the first and readiest of the foresaid sums so to be liferented by the faid B, shall return and be payable to her heirs, executors and affignees; AND which fum, the faid A binds and obliges him and his forefaids, in the events above mentioned, to content and pay to her, or her foresaids, at the first term of Whitsunday or Martinmas immediately following his death, and the death of the faid children before any of them shall have attained the age of 14 years, with 100l of penalty in case of failure, and interest of the said principal fum from the faid term of payment during the not payment thereof; BUT DECLARING, that from and after the term when the faid 500l. shall be paid to the said B, the foresaid yearly annuity of 2001. Sterling provided to her, shall be restricted to 1751. Sterling yearly, in all time thereafter; AND FURTHER, the faid A hereby binds and obliges him to provide and fecure ALL and sunday lands, heritages and fums of money, goods, gear and other estate, real or personal, VOL: V. that

that he shall happen to conquest, acquire or succeed to, during the standing of this present marriage, to and in favour of himself in liferent, and the heirs male to be procreated betwixt him and the faid B, and the heirs whatfoever of their bodies, in fee; whom: FAILING, to his own nearest heirs and assignees whomsoever; with power ALWAYS to the faid A, in case there shall be more fons than one of the present marriage, to divide and proportion the faid conquest amongst the said fons, as he shall see proper, by a writing under his. hand, at any time in his lifetime, even on deathbed; AND, FAILING such division, the same shall be divided equally amongst the said sons; AND, for ASCERTAINING the extent of the faid conquest. it is hereby AGREED, that the same shall comprehend and extend to all and whatever estate, heritable or moveable, belonging to, or owing to, the faid A, at the diffolution of the marriage, whether the fame has accrefced by purchase, donation or fuccession, after deduction of the debts due by him, and over and above the faid fum of 4000l. Sterling: WHICH PROVISIONS made and conceived in favour of the faid B shall be accepted of, and the same are hereby accepted of by the said B on her part, in full satisfaction of all terce of heritage, half or third of moveables, or others whatfoever, which she can claim or demand from the faid A or his representatives, or his estates either heritable or moveable, in case she shall happen

to survive him, or which her executors or nearest of kin can claim or demand from the faid A, in case he shall survive her, excepting herefrom her aliment from the time of the faid A's death, to the next Whitsunday or Martinmas thereafter: and her mournings, which, in the event of her furviving him, are hereby declared to be due to her; as also, the provisions hereby made for the children of the faid marriage are expressly DE-CLARED by the faid A and B to be in full fatisfaction of all legitim, portion natural, or bairns part of geat, which the children to be procreated of the faid marriage can claim or demand by or through the death of the faid A; FOR WHICH CAUSES, and ON the OTHER PART, the faid B hereby Assigns and Dispones to the faid A, his heirs, executors and affignees whatfoever, all and whole the fum of 2000l. Sterling principal, being her share of the sum of 4000l. Sterling, contained in an heritable bond of provision, dated granted by B in favour of C and her, equally, with her proportion of the liquidate penalty and interest, corresponding to the said principal sum of 2000l. Sterling, together with the faid heritable bond itself, procuratory of refignation and precept of fasine therein contained, in so far as the same are conceived in favour of the faid B, with all that has or may follow thereupon: And it is hereby PRO-VIDED and DECLARED, that although the prefent marriage should happen to dissolve within year

and day, and without a living child procreated of the same, yet the whole provisions conceived in favour of either party shall subsist and take effect, any law or practice to the contrary notwithstanding, which is hereby with mutual consent. passed from and discharged : AND LASTLY, it is: hereby agreed, that all execution shall pass hereon against the faid A, for implement of the provisions conceived in favour of the said B. and the children of the marriage, at the instance of D. E. P & G, or any one of them, or of their children = And the faid parties consent to the registra-TION hereof in the books of Council and Seffion. &c. &c. (as in the preceding example.)

VARIATIONS on this form of the Contract of MARRIAGE

#### 1. Where the Husband's Father joins in the Contract.

It is contracted and matrimonially a-GREED UPON betwixt the parties following, viz. A inn. fon of A sen. with the consent of his faid father, and the faid A fen. for himself on the ONE PART, and B on the other part, in manner following; THAT IS TO SAY, the faid A and B. have accepted, &c.—(in common form;—then the abligations on the husband to pay a certain liferent

went provision to the wife, in case of her surviving him, or to provide her the furniture, perhaps under a restriction in case of children, or redeemable according to the agreement of parties, then the provision in favour of the children will be expressed in this manner)-And in contemplation of the faid marriage, and to enable the faid A jun. to difcharge the obligations hereby incumbent on him, the faid A sen. binds and obliges him, his heirs, executors, and fuccessors whatsoever, to content and pay to the faid A his fon, or his heirs, executors. or assignees, the sum of 2000l. Sterling, in manmer following, viz. 100cl. Sterling thereof against the term of Martinmas next to come, and the other good, thereof at the first term of Whitfunday or Martinmas next after the death of the faid A fen., with 2001. Sterling for each of the faid payments of penalty, in case of failure, To-GETHER ALSO with the legal interest of the said whole fum from the term of to the faid respective terms of payment, and thereafter during the not payment thereof; which sum of 2000l. Sterling, with the fum of gool. of tocher after mentioned, the faid A junior, in the event of his predeceasing his faid spoule, binds and obliges him and his foresaids to lend out on lands, or good fecurities bearing interest, and to take the rights and securities thereof in favour of himself and the said B his promised spouse, in conjunct fee or liferent, for fecurity to her allenarly of the liferent provided to her in manner above written, but to be restricted in the event above provided for, and to the child or children to be procreated of this marriage, in fee; which FAILING, to the faid A jun. his heirs and affignees whatfoever; BUT, in case the said A junior shall happen to furvive the faid B, THEN and in that event, he BINDS and OBLIGES him and his foresaids. in place of the former provision, to content and pay to the children of the faid marriage the sums of money following; viz. in case there shall be only one fon, and no daughter, to that fon the fum of 1000l. Sterling; in case there shall be one daughter only, and no fon, the fum of 600l. Sterling; in case there shall be two or more daughters, and no fons, the fum of 1000l. Sterling; and in case there shall be two or more children, whereof one or more of them shall happen to be a fon or fons, to them the fum of 1500l. Sterling; AND which portions of 600l., 1000l., or 1500l., in the respective events foresaid, the faid A junior binds and obliges him and his forefaids to content and pay to his faid child or children, at the first term of Whitsunday or Martinmas next after his own death, with a fifth part of the faid respective sums of penalty in case of failure, together with the legal interest of the said respective sums, from the faid term of payment, during the not payment thereof; AND, until the faid term of payment the faid A junior BINDS

ZINDS and OBLIGES him to aliment, educate, and maintain his faid children in every thing fuitable to their station, as also to put them to proper employments on their respectively attaining the age proper and fit for entering into business: DECLAR-ING ALWAYS, as it is hereby expressly PROVIDED and DECLARED, that notwithstanding the fee of the faid 2500l. Seterling is provided to the children of the faid marriage in general, As ALSO that the foresaid provisions, in the event of the said A jun. furviving the faid B, are granted to the children in general, yet it shall always be in the power of the faid A junior, by a writ under his hand, at any time in his life, and even on deathbed, to divide and proportion either of the faid provisions which shall become due, amongst the faid children, in fuch fhares as he may think proper to fix, excepting only in the event of his entering into a second marriage, in which case he shall have no power of division, without the confent of the nearest male relation of the said B then in life, who shall be major, and within the kingdom at the time of making fuch division; and, failing of any division by the said A junior, whichever of the faid provisions shall be due to the faid children shall be divided amongst them equally.—The contract will then declare the provisions to be in full of all legal provisions to the widow and children in common form; and the conveyance of the tocher to the husband, with the usual concluding clauses of the contract, will close the deed.

#### 2. Where the wife's Father joins in the Contract.

It is contracted and matrimonially a-GREED upon between the parties following, viz. A, ON the ONE PART, and B daughter of C, with confent of her faid father, and the faid C for himfelf, on the other part, in manner following; THAT IS TO SAY, the faid A and B have accepted, and do hereby accept of each other for their lawful spouses, and promise instantly to solemnize the bond of marriage, agreeably to the rules of the church; in contemplation of which marriage, the faid C hereby BINDS and OBLIGES himfelf, his heirs, executors, and successors, to content and pay to the faid A, his heirs, executors, and affignees, the principal fum of L. 500 Sterling, in name of tocher with the faid B his daughter, at the term of Martinmas next, with a fifth part more of liquidate penalty in case of failure, and the legal interest of the said principal fum from the faid term of Martinmas during the not payment; and that in full fatisfaction to the faid B his daughter, and her faid husband, of her patrimony, and of all that they might ask or crave of the faid C her father, or his representatives, through his death, or the death of Mrs C his spoule,

spouse, or in any other manner of way whatever. unless her father shall be inclined, from good will and favour towards his faid daughter, to make any further provision in her favour; FOR WHICH CAUSES AND on the OTHER PART, the faid A hereby BINDS and OBLIGES himself to join 1000l. of his own proper money with the faid fum of 500l. and lay out the faid whole fum of 1500l., on fusficient bonds, either heritable or moveable. and to take the rights and securities thereof to himself and his promised spouse, in conjunct see and liferent, for her liferent use allenarly after his death, in case she shall happen to survive him, and to the children, one or more, to be procreated betwixt them, WHOM FAILING, to the said A's heirs and assignees whomsoever, in fee; AND as often as the faid fum or any part thereof shall be uplifted, the faid A binds and obliges himself and his foresaids to settle and secure the same in the terms above expressed, &c .- This contract may have a provision of the conquest, or power of division in the parents, and conveyance of the household furniture; a declaration that the provisions are in full of the legal provisions, and that they shall subsist, notwithstanding the dissolution of the marriage, within year and day, without a living child, &c.

# 3. Clause for ascertaining the Extent of the Conquest.

Where the conquest during the subsistence of the marriage is provided to the husband and wife in conjunct liferent, and the children in fee, which is a very common clause, it is usual (and it is proper for preventing future questions) to state the present amount of the husband's estate, in order to ascertain what can be considered as conquest at the dissolution of the marriage: This is done by a clause in the following terms, subjoined to the provision of the conquest-And that the AMOUNT of the faid CONQUEST may be the more easily known and ascertained, the faid A hereby DECLARES that the free funds and effects presently belonging to him, extend to the fum of Sterling.—This clause is at other times expressed in such a manner as to include every thing of which the husband shall be possessed at the dissolution of the marriage, in whatever way it may have been acquired, excepting the sums provided in the marriage contract, of which there is an instance in Example 2d.

#### 4. Clause relative to the Mournings and Aliment.

This clause will come in, in the close of the provisions by the husband to the wife, in these terms.

" AND FURTHER, the faid A, to prevent all controverly and lawfuits that may arise, in case the faid B shall furvive him, BINDS and OBLIGES him and his forefaids to make payment to the faid B within three months after the day of his death, of the fum of Sterling, as an allowance for her mournings, with a fifth part of penalty in case of failure, and interest thereof from and after the faid term of payment, during the not payment thereof: AND FURTHER, to make payment to her per annum for the at the rate of time, from the day of his death to the first term of Whitfunday or Martinmas thereafter, as the expense of maintaining the family to that term, BESIDES relieving her of the house rent and servants' wages up to the term; AND which aliment shall be paid to her at the same time, and under the like penalty, with the allowance for mournings, and shall in like manner bear interest during the not payment thereof; which sums the faid B hereby accepts of in full of all she can ask in name of mourning, or for alimenting and supporting the family to the first term after her husband's death. "

### 5. Clause prohibiting the Wife to renounce her Provisions.

"AND it is hereby AGREED UPON and DE-CLARED, that it shall not be in the power of the faid Taid B, during the existence of the marriage, to discharge, renounce, restrict, or in any shape diminish or affect the foresaid provisions, nor to convey or assign the same onerously or gratuitously, without the consent of C her father; declaring that any deed done inconsistently with this declaration, shall be void and null, to all intents and purposes."

## 6. Clauses relative to the Jus Mariti of the Husband.

The husband may renounce his jus mariti; and where the property of the wife consists in heritage, or in bonds, the effect of the renunciation will be complete; but where the wife's property consists in moveables, or a stock in trade, to give effect to such renunciation will be more difficult. It may be attained, however, either by referring to an inventory of the property, duly authenticated, or by conveying the wife's estate to a trustee. Examples of the renunciation of the jus mariti, where there is a landed estate, will be given in the ensuing section; and I shall subjoin here a clause for reserving the wife's power over sums not meant to fall under the husband's jus mariti; with an example of a trust deed by a woman before her marriage, with the confent of her intended husband, for the purpose of securing her fortune. " AND WHEREAS the faid

faid B has also due to her the sums of money following, viz.—(here several debts were mentioned)-amounting the faid feveral sums to the sum of 1000l. Sterling; AND it being agreed upon by both parties that the interest of the said several debts shall belong to the faid A during the subfistence of the marriage, and that the principal fums themselves shall still remain the property of the faid B, and be at her disposal; THEREFORE the faid B assigns, Transfers and dispones to the faid A, the interest of the said principal sums, amounting together to the fum of 1000l. Sterling, during the subsistence of the marriage; BUT RESERVES full power and liberty to herfelf to As-SIGN and DISPONE, without the confent of the faid A, the faid principal fums, burdened with the right to the interest arising thereon, hereby conveyed to the faid A; AND in fo far the faid A does hereby RENOUNCE his JUS MARITI, and all right or interest in him, inconsistent with this referved power in the faid B; AND in case it shall be necessary to uplift any part of the faid principal fums during the subsistence of the marriage. it is hereby expressly agreed that the same shall not fall under the jus mariti of the faid A, but the fums so uplifted shall be lent out, and the bonds and securities therefore shall be taken payable to the faid B, her heirs, executors and affignees." This clause will come in naturally after the conveyance of the wife's portion to the husband. Another

Another example, where both principal and interest are to remain the property of the wife: " AND WHEREAS it is agreed by both parties that the fum of 1000l. Sterling, due, &c .- (here the ground of debt will be expressed)—with the interest due, or which shall hereafter fall due thereon, shall still remain the property of the faid B, and be at her own absolute disposal: THEREFORE, the said B hereby referves a power to uplift and discharge the faid debt, principal and interest, without the confent or authority of the faid A; and in case it shall be necessary to uplift the faid principal fum, or any part thereof during the subsistence of the marriage, it is hereby agreed that the fame shall not fall under the jus mariti of the faid A, but the faid B shall be at full liberty to reemploy the same in bonds or other securities, taken payable to her, her heirs, executors and affignees; AND the faid A, by these presents, RENOUNCES all right, title and interest, which he has or might have to the faid principal fum, and whole interest due or to become due thereon, in virtue of his jus mariti, or otherwise."

Assignation

Assignation by a lady, with the consent of her intended husband, to trustees, previous to her marriage, vesting her funds for her own liferent use, and the use of her children, in fee, and excluding the jus mariti of her future husband—reserving a power of dividing the provision, and of appropriating the trust fund to certain purposes, so as to defeat the right of fee.

I, B, being resolved to marry A, and it being agreed, that before the folemnization of the faid marriage, I should settle my affairs in manner. following; therefore I, with confent of the faid A, have affigned and transferred, as I by these presents assign, transfer, and dispone, to and in favour of C, D, E, and F, and to the furvivors or furvivor of them, and to fuch as they shall afterwards assume into the trust, in virtue of the powers herein after conferred on them; BUT in TRUST, for behoof of me the faid B in liferent, for my liferent use allenarly, exclusive of the jus mariti or administration of the said A on our marriage, or of any future husband, and for the use and behoof of the children to be procreated betwixt me and the faid A in fee, BUT ALWAYS under the conditions and provisions herein after inferted; whom failing, for the use and behoof of me, my heirs and assignees whomsoever, all and

and whole the fum of Sterling of prin-Sterling of penalty and interest of the faid principal fum owing, and that shall fall due in future, on a bond granted by M to me, dated , with the faid bond itself, and all that has or is competent to follow thereon; PROVIDING ALWAYS, as it is hereby PROVIDED and DECLARED, that the interest of the said principal fum of shall be paid by the faid trustees, or their quorum, to myself, during all the days of my life; and that my own receipt for the same, without consent of the said A, or without the confent of any future hufband, shall be a good and fufficient receipt for the same; and the fame shall noways be subject to, nor affectable by the debts or deeds of my husband; the jus mariti and power of management of my husband over the same, being hereby expressly debarred and excluded: AND FURTHER, it is hereby DE-GLARED, that in case there shall be children procreated of the marriage betwixt me and the faid A. it shall be competent to me to divide the faid amongst the said children, in such fum of way and manner as I shall think proper, by a writing to be subscribed by me, without the confent of the faid A; and in case of my death without making the faid division, it shall be in the power of the said A to divide the same amongst the said children, as he shall think fit; and failing any division by either of us, the faid fum

fum shall be divided in equal shares amongst the faid whole children; and in case I shall predecease the said A, and there shall he children procreated of our faid marriage then existing, it shall be lawful to me to provide the faid A in the life. rent of the faid principal fum of ring all the days of his life; AND FAILING children of the faid marriage with the faid A, or in the event of their after decease before arriving at majority, and without children, it is hereby declared lawful to me to dispose of the said whole fum of or any part thereof to the faid A. or to any other person I may think fit, WITH POW-ER to the faid trustees, or their quorum, or the furvivors or furvivor of them, to appoint a factor for uplifting the interest of the said principal fum. and to allow him a reasonable gratification for his trouble, with a power to retain in his own hand, all charges and expenses that may happen to be debursed in the execution of the trust hereby constituted; with power also to the said trustees, or their quorum, or the furvivors or furvivor of them, to call for, pursue for, receive and discharge the faid principal fum of nalty, and to reemploy the same on security, heritable or personal, as they shall think best, and to take the rights and securities thereof in the terms and under the conditions and provisions herein expressed, and that as often as the same shall happen to be uplifted; DECLARING ALWAYS, that the debtors. VOL. V.

debtors shall noways be concerned in the reemployment of the faid fums, but shall be fully exonered by the discharge of the said trustees or their quorum, or of the furvivors or furvivor of them; And, for the encouragement of the faid trustees to accept of the faid trust, I hereby declare, that they shall only be liable to reemploy the foresaid sum of when the same happens to be uplifted, in the hands of a person or persons, habite and repute responsible at the time of lending the same, and they shall noways be liable for omissions or neglects of any kind in their management, or for the intromissions of each other, or of their factor, but only each for his own actual and personal intromissions: AND FURTHER, it is hereby expressly provided and DECLARED, that notwithstanding the fee of the said fum-of Sterling is provided to the children to be procreated betwixt me and the faid A, it shall be competent to me, at any time hereafter; to call for the faid principal fum, or any part thereof, in order to its being laid out in lands or other good fecurity within the kingdom of or any other country where I may

have my residence for the time; the securities thereof to be taken under the direction of those learned in the laws of such country, and rendered capable of securing the interests hereby provided to me and my said children; As Aliso it shall be competent to me to call for any part of

the faid principal fum not exceeding . to be applied to purchasing any post, commission, or employment for the faid A, or any annuity, either to him or me; and the faid trustees, on payment to me or my order, of the faid principal fum, or any part thereof, when called for as aforesaid, shall be exonered by my receipt and discharge for the same, without consent of the faid A or any future husband, and shall thenceforth be fully exonered of the trust, in so far as relates to the fums fo paid, at the hands of the faid children to be procreated of my marriage with the faid A, and at my hands, or the hands of my husband, or of any person whatever who can, in any shape, claim under this trust; TURNING and TRANSFERRING, &c. (in common form.)

## 7. Provisions to Children.

The provisions to children which have been given in the examples of the contract have arisen from securing a certain sum to the children in fee; in place of this, after providing for the wife, the provisions to the children may be thus expressed, AND FURTHER, the said A, for the causes fore-said, does hereby contract and provide the sum of 2000l. Sterling, for the children of the said marriage, which he obliges himself and his foresaids to pay in manner after speci-

fied, but under the restrictions and limitations underwritten: AND THAT at the first Whitsune day or Martinmas after their respective marriages or majorities, whichever of them shall o first happen, and with the legal interest from and after the faid term of payment during the onot payment thereof; and he shall further educate and maintain the faid children suitably, e according to their rank and degree, until these oprovisions become due; BUT ALWAYS with and " under the following RESTRICTIONS and PROVIsions, as it is hereby provided and declared, that if there be no fon existing of the said marriage, but daughters only, and that these daughters are not to the number of fix, then the faid provision is to be restricted to such a fum as shall not exceed 3001- for each daughter; AND with this provision also, that if there is only one fon of the marriage and no daughter, he shall only be entitled to draw 1000l. Sterling of the faid fum; and if there shall be only one for and one daughter, the faid whole e 2000l. shall be divided equally between them; RESERVING always full power to the faid A, at ' any time of his life, to divide the foresaid proe visions among his children in such other prooportions as he may judge proper; and failing fuch division, the said total sum is to be divided e according to the proportions before specified.

- II. CONTRACT OF MARRIAGE were the Parties are possessed of Landed Property.
- Example 1.—Contract of Marriage where the estate is the Property of the husband—containing an obligation to infeft the wife in an annuity—giving a certain sum in place of the furniture—an obligation to settle the land on the heir male of the marriage, with procuratory for that purpose—provisions to the children with a power of division given to the father, &c.

It is contracted, agreed, and matrimo-NIALLY ENDED betwixt the parties following, viz. A ON THE ONE PART, and B daughter of the deceased B on the other part, in manner following; THAT IS TO SAY, the faid A and B have agreed to accept of each other for lawful spouses, and bind themselves instantly to solemnize their marriage. In contemplation of which marriage, the faid A BINDS and OBLIGES him, his heirs and fucceffors whatever, at his own expense, valid-, ly to infeft and seise the said B during all the days of her natural life after his death, in an annuity of 2001. Sterling, free of all burdens and deductions whatever; but under this restriction, that in case there shall be an heir male of this marriage in existence at the dissolution thereof, then  $\mathbf{Z}_{3}$ during

during the existence of such heir male, or of his issue, the said annuity shall be restricted to the yearly fum of 150l. Sterling; WHICH ANNUITY of 2001. Sterling, restrictable in the event forefaid, to the fum of 150l., shall be uplifted and taken at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first term's payment thereof at the first term of Whitfunday or Martinmas after the death of the faid A for the half year enfuing, and fo forth, yearly and termly thereafter, during all the days of her natural life, with a fifth part more of each term's payment of liquidate penalty in case of failure, and the lawful interest of the said termly payment from the respective terms of payment during the not payment thereof, furth of ALL and WHOLE—(here describe the lands)—or furth of any part or portion thereof, and from the first and readiest of the rents thereof; AND WHICH ANNUITY shall be held by two several infestments and manners of holding, one thereof to be held of the faid A his heirs and fuccessors, and the other from him of his immediate lawful fuperiors thereof, both in free blench farm, for payment of a penny Scots money yearly on the ground of the faid. lands, at the term of Whitfunday yearly, if asked allenarly, and that either by refignation or confirmation, or both, the one without prejudice to the other: AND the faid A BINDS and OBLIGES him and his foresaids, not only to warrant the forefaid 

faid free liferent annuity at all hands, and against all deadly, as law will; BUT ALSO, to make payment to the faid B as well not infeft as infeft, of the faid free liferent annuity of 2001. Sterling, to be restricted in the event foresaid to the sum of 150l., and that yearly and termly, at the terms and by the proportions above written, during her lifetime, and beginning the first term's payment of the faid annuity at the first term of Whitfunday or Martinmas next and immediately following the death of the faid A, for the half wear enfuing, and so forth, yearly and termly thereafter, during all the days of her natural life. with a fifth part more of each term's payment of liquidate penalty in case of failure, and the legal interest of the said term's payment during the not payment thereof; AND FURTHER, in case the faid B shall survive the said A, and there shall be no children of the marriage existing at the dissolution thereof, the said A BINDS and OBLIGES him and his foresaids, to content and pay to the faid B her heirs or assignees, the sum of 2001. Sterling; and in case there shall be children one or more of the marriage, existing at the dissolution thereof, the fum of 150l, only, and that at the first Whitsunday or Martinmas next after the death of the faid A, with a fifth part more of liquidated penalty in case of failure, and interest of the sum payable in the respective events forefaid, from the faid term of payment during the

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not payment thereof: As also, in contemplation of the said marriage, the said A binds and obliges him and his foresaids to resion the lands of and others before and after specified, in favour, and for new infestment of the same, to be made and granted to the said A and the heirs male to be procreated of this marriage, and to the heirs whatsoever of their bodies; whom falling, to the heirs male to be procreated of the body of the said A in any subsequent marriage, and to the heirs whatsoever of their bodies; whom all falling, to the said A his nearest heirs and assignees whomsoever; and for that purpose the said A nominates and appoints

and each of them, jointly and feverally, his lawful and irrevocable procurators, with power to them to refign, as he, by thefe presents, RESIGNS, SURRENDERS, UPGIVES, OVERGIVES and DELIVERS, ALL and WHOLE—(here the lands are described)—in the hands of his immediate lawful superiors, or of their commissioners in their names, having power to receive refignations, and to grant new infeftments thereupon, IN FAVOUR, and for new infeftment of the same, to be MADE and GRANTED to the faid A, and to the heirs male of this present marriage, and to the heirs whatfoever of their bodies; whom failing, to the heirs male to be procreated of the body of the faid A in any fubsequent marriage, and to the heirs whatfoever of their bodies; WHOM FAIL-

ing, to the faid A, his nearest heirs and assignees whomfoever; acts, inftruments and documents. one or more in the premises to take, and, generally, all and fundry other things necessary to do. which the faid A could do himfelf, were he perfonally present, or which to the office of procuratory in such cases is known to belong. FURTHER. in case there shall be other children, whether fons or daughters, one or more, procreated of the present marriage, beside the heir male thereof, then, and in that case, the said A BINDS and OBLIGES him, his heirs and successors, to content and pay to fuch other children, the fums of money following, viz. If there shall be only one child of the faid marriage beside the heir male existing at the term of payment after mentioned, the sum of 1500l. Sterling; if there shall be two or more children, male or female, the fum of 3000l. Sterling; and which sum, according to the event forefaid, shall be payable at the first term of Whitfunday or Martinmas next after the death of the faid A, with a fifth part of the provision of liquidated penalty in case of failure, and interest thereof from and after the said term of payment, during the not payment thereof. FURTHER, in case it shall happen that there be no heir male of this marriage who shall succeed to the faid effate of and others before written; or, in case an heir male of this marriage, after having succeeded to the faid estate, shall die

die in minority, and unmarried, and there shall; in either case, be daughters of this present marriage, who shall be excluded from the succession by the heir male of any subsequent marriage into which the faid A may enter, he hereby BINDS and OBLIGES him and his forefaids to content and pay to fuch daughter or daughters as may be excluded in manner foresaid, the respective sums of money following, viz. if there be but one daughter existing at the term of payment after mentioned, the sum of 2000l. Sterling; if two daughters, the fum of 3000l. Sterling; and if three or more daughters, the fum of 4500l. Sterling; and that at the respective terms following, viz. at the first term of Whitsunday or Martinmas after the faid A's death, in case there shall be no heir male of this marriage then existing, and they shall then be excluded in manner forefaid; and in case of such heir's existence, and afterwards failing during minority and unmarried, and being fucceeded by the heir male of the faid A's body in any subsequent marriage, then at the first of the faid terms which shall happen after the faid heir's death, with a fifth part of the sums of liquidate penalty in case of failure, and interest thereof, from and after the faid respective terms of payment during the not payment thereof; DE-CLARING ALWAYS, that in case the foresaid enlarged provisions to the daughters shall take place, they shall be in full of the former provisions made

for them in the character of younger children; and if these provisions shall have previously been paid, the daughters shall be bound to impute what they may have received, in payment fo far of their faid enlarged provisions; AND in case the said A shall happen to survive the said B, and to enter into a fecond marriage, then, and in that event, he binds and obliges himself, and his foresaids, to pay the just and legal half of the provisions first above stipulated, and agreeably to the number of children who shall then be in life, and that at the first term of Whitsunday or Martinmas after his faid fecond marriage, with a fifth part more of the faid respective provisions of liquidated penalty incurred through failure, and interest of the faid provisions, from and after the faid term of payment, during the not payment thereof; the fums fo paid being always to be imputed in payment pro tanto of the respective provisions claimable by the faid daughters or younger children at their father's death, or on their exclusion by the subsequent failure of the heir male of the marriage as aforefaid; DECLARING ALWAYS, as it is hereby PROVIDED and DECLARED, that although the foresaid provisions, in the respective events foresaid, are granted to the children in general, yet it shall always be in the power of the faid A, by a writ under his hand, at any time before his entering into a fecond marriage, to divide and proportion the same amongst the said children as he shall fee

fee proper; AND, FAILING any fuch division, the faid general provisions shall be divided equally amongst the said children who shall be in life at the respective terms of payment above expressed: AND WHICH respective provisions, made and conceived in favour of the said B, and the children of the faid marriage, shall be, and the faid B has accepted, and hereby accepts of the fame, in full fatisfaction to her of all terce of heritage, half or third of moveables or others whatever, which the can claim or demand from the faid A or his representatives, or out of his estate or effects, in case she shall happen to survive him, (her claims of aliment and mournings alone excepted, or which her executors or nearest of kin can claim or demand from the faid A, or from his estate, or the goods in communion, in case he shall survive her; as also, the other provisions herein contained are declared to be in full fatisfaction of all legitim, portion natural, or bairns' part of gear, which the children to be procreated of this marriage can claim or demand through the death of their faid father. For which causes, and on the OTHER PART, the faid B hereby Assigns, conveys and makes over, to and in favour of the faid A, her promised spouse, and his heirs and assignees whomsoever, all debts and sums of money whatfoever, prefently pertaining and belonging to her, with the bonds, bills, and other fecurities of the same; and particularly, without prejudice

to the generality foresaid, the principal sum of with the interest thereof resting from and in time coming, during the not payment thereof, with of penalty, all contained in and due by a bond granted by to the faid B her heirs and affignees, dated and together with the faid bond pavable itself, and all action and execution competent thereon; with full power to the said A or his foresaids, to receive, discharge, or convey the said . bond and fums of money thereby due, and generally to do every thing in regard thereto which the faid B could have done before granting these presents: AND it is hereby PROVIDED and DB-CLARED, that although the present marriage shall be diffolved within year and day of its commencement, and without a living child procreated betwixt the faid A and B yet the whole provisions conceived in the present contract of marriage, in favour of either party, shall subsist and take effect, any law or practice to the contrary notwithstanding, which is hereby with mutual confent passed from and discharged: AND LASTLY, it is hereby AGREED, that all execution shall pass hereon against the said A, for implement of the provisions conceived in favour of the faid B and the children of the marriage, at the instance of or any of them, or any of their eldest sons or apparent heirs: FURTHER, the faid A DESIRES and REQUIRES YOU and each.

each of you, jointly and feverally, his bailies in that part specially constituted, that, on fight hereof, ye pass to the grounds of the said lands. and there give and deliver to the faid B liferent state and sasine, actual, real, and corporal posfession, of all and whole the foresaid free liferent annuity of 2001. Sterling, to be restricted to the fum of 150l. Sterling in the event above specified: to be uplifted and taken during all the days of the faid B's natural life, after the decease of the faid A her husband, at two terms in the year, Whitfunday and Martinmas, by equal portions, with a fifth part more of liquidate penalty for each term's payment in case of failure, and the lawful interest of the said annuity, from the respective terms of payment thereof while the fame remains unpaid; beginning the first term's payment thereof at the first term of Whitfunday or Martinmas immediately after the death of the faid A for the half year enfuing, FURTH of ALL and WHOLE the lands of and others, as the same are more particularly above described, AND THAT by delivery to the faid B, or to her certain attorney in her name, bearer hereof, of earth and stone of the ground of the faid lands, and a penny money for the faid annuity, and all other fymbols usual and requisite; and this in nowise ye leave undone; which to do, the faid A commits to you, and and each of you, full power, by this his precept

of fafine directed to you for that effect. In witness whereof, &c.

Example II.—Contract of Marriage, in which the Husband's Father and Mother are parties, and where the father, as proprietor of the estate, becomes bound to convey to his son, and the heirs male of the marriage, and the heirs of their bodies; whom failing, to the heirs male of any subsequent marriage, and the heirs of their bodies; whom failing, to the heirs female of the marriage, with provisions of an annuity and the mansion-house and parks to the widow, with the furniture, in certain events; and a provision to the younger children, and to the daughters in case of their being debarred from the succession by an heir male of another marriage, &c.

IT is CONTRACTED, AGREED, and MATRIMO-NIALLY ENDED betwixt the parties following, viz. A jun. with confent of A fen. his father, and the faid A fen. for himself, with confent of his said son, as also with consent of, and as taking burden on him for N his spouse, and the said N for herself, and for any right of liferent, conjunct fee, terce, or other right which she has or can pretend to the lands and others after-mentioned, either by her contract of marriage with her said husband, by special provisions and clauses of conquest in liferent,

liferent, conceived in her favour, or by any other voluntary or legal provision conceived in her fayour, excepting her liferent provisions hereinafter reserved to her, with consent of the said A sen. her husband; and they all, with one advice and consent, ON THE ONE PART, and B eldest daughter of B, with confent of her faid father, and the faid B for himself, on the other part, in manner following; THAT IS TO SAY, the faid A jun. and Mrs B have accepted, and hereby accept each of them the other, as lawful spouses, and promise inflantly to folemnize their marriage; IN CONTEM-PLATION of which marriage the faid A fen. with confent of, and taking burden on him for the faid N his spouse, and the said A jun. both with one advice and consent, BIND and OBLIGE them, jointly and feverally, and their heirs and fuccessors, to infeft and sease the said Mrs B in liferent during all the days of her lifetime, after the death of the faid A. NOT ONLY in an annuity of Sterling, free of all teinds, minister's stipend, schoolmaster's salaries, cess, taxations, and other burdens and duties whatever; to be uplifted and taken, under the restrictions after-mentioned, at two terms in the year, Whitfunday and Martinmas, by equal portions; beginning the first term's uplifting at the first Whitsunday or Martinmas after the death of the faid A for the half year enfuing, and fo on yearly and tremly thereafter during the life of the faid B FURTH OF ALL AND WHOLE—(here describe the lands)—or furth of any part or portion thereof, first, best, and readiest of the rents thereof, BUT ALSO in the liferent right of the manor-place, offices, yards, orchards and enclofures of , as prefently possessed, &c. AND THAT by two feveral infeftments and manners of holding, one thereof to be held of the faid A fenior and of the faid A junior, or their heirs and fuccessors, the other from them of their immediate lawful superiors thereof, both in free blench, for payment of a penny Scots money, on the ground of the faid lands, at the term of Whitsunday yearly, if asked; and that either by resignation or confirmation, or both, the one without prejudice to the other; with this provision always: as it is hereby expressly PROVIDED and DECLARED. that the foresaid annuity of is and shall be restricted to a yearly free annuity of during the joint lives of the faid A fenior and the faid N, his spouse; but on the death of either of them, it shall rise to the sum of the death of both, it shall be restored to the full ; AND FURTHER, in case there be fum of heirs of this marriage who shall succeed to the said lands and estate, and that the said Mrs B shall marry a fecond husband, THEN, and in these joint cases, it is provided and declared, that the forefaid liferent annuity of is and shall be restricted to a yearly free annuity of VOL. V. zhich

which is not to increase to any higher sum on the death of either of the faid A senior, or N his spouse; without prejudice, however, to the faid B to recur to her faid full liferent annuity of , on the failure of the heirs of this prefent marriage succeeding in manner foresaid to the faid lands and estate, and that notwithstanding she may have married a second husband; BUT in the event of her marrying a fecond husband, her liferent right to the faid manor place shall cease and become extinct from the first Whitsunday or Martinmas following her fecond marriage; AND FURTHER the faid A jun. binds and obliges him and his forefaids NOT ONLY to WARRANT the foresaid free liferent annuity, and the manor place and pertinents, under the restrictions foresaid, to be free, fafe and fure to the faid Mrs B from all perils, burdens, dangers and incumbrances, at all hands, and against all deadly, as law will, BUT ALSO to make payment to the said B of the said free liferent annuity of - under the refirictions above written, yearly and termly, at the times and by the proportions above-written, during her lifetime, and beginning the first term's payment at the first term of Whitsunday or Martinmas immediately following the death of the faid A junior, and fo forth yearly and termly thereafter during all the days of her life, after his death, with a fifth part of penalty in case of failure, and interest of the said annuity from the

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term of payment, during the not payment thereof: AND FURTHER, the faid A-junior hereby PRO-VIDES and DISPONES to the faid B his spouse, in case she survive him, and there be no children of the marriage existing at the dissolution thereof; the just and equal half of all household plenishing and furniture which shall belong to him at the time of his death, including filver plate and heirship moveables, wherever or in whatever houses or dwellingplaces the fame shall be at the time; AND in case she survive him, and there be children of this marriage existing at the dissolution thereof, then only the just and equal third part of all fuch plenishing and household furniture as aforefaid, including as faid is, but redeemable always in manner afterwritten; and he binds and obliges him and his foresaids to free and relieve the share before disponed of the said furniture from all debts and deeds to which he is or shall be liable at the time of his death, or which can anyways affect or burden the fame; BUT PROVIDED always, as it is hereby EXPRESSLY PROVIDED and AGREED, that the faid half, or third, of the faid plenishing shall be redeemable from the said B, by the heirs of the faid A junior succeeding to him in his estate, or his assignees, to the remainder of the faid furniture, by payment to her of

for the one half thereof, if her right extend thereto, or money foresaid, for the third part thereof, in case her right extend no further,

and that at any time within fix months after the faid A junior his death; BUT DECLARING, that unless such sum as may correspond to the share of the furniture, to which she shall have right, be paid within the faid space of fix months, then her half or third of the faid furniture shall not thereafter be redeemable from her, but shall continue and remain her absolute and irredeemable property in all time thereafter; and which liferent provisions and disposition foresaid, the said B, with consent foresaid, hath accepted, and hereby accepts of, in full fatisfaction to her of all terce of lands, half or third of moveables, and every thing else which she can claim by and through the death of the faid A junior her husband; or which her executors or nearest in kin can claim throughher predeceasing him: AND in like manner, the faid A fenior and A junior, IN CONTEMPLATION of the faid marriage, bind and oblige them, and their foresaids, to make due and lawful resignation of the faid lands, teinds, and others above and after mentioned, in favour of, and for new infeftments to be made and granted to the faid A junior. and his heirs after mentioned; and, for that effect, the faid A fenior, with confent of, and as taking burden for his faid spouse, and the said A junior, both with one advice and confent, have NOMI-NATED, CONSTITUTED and APPOINTED, and, by these presents, NOMINATE, CONSTITUTE and APand each of them. POINT jointly

jointly and feverally, their lawful and irrevocable procurators, for them and in their names, to refign, furrender, fimpliciter upgive, overgive and deliver, likeas they both, with one advice and confent, and the faid A fenior, with confent of, and as taking burden on him for his faid spouse. refign, &c. ALL and WHOLE—(here the lands were described)—together with all right, title, interest, claim of right, property or possession, which they or either of them have or can pretend thereto, or to any part or portion thereof in time coming, in the hands of their respective immediate lawful superiors thereof, or of their commissioners, in favour, and for new infeftment of the same, to be made and granted to the faid A junior, and the heirs male of this present marriage, and to the heirs whatfoever of their bodies; WHOM FAILING, to the heirs male of the faid A junior in any subfequent marriage, and the heirs whatfoever of their bodies; WHOM FAILING, to the daughters of the present marriage; whom failing, to the daughters of the faid A in any subsequent marriage; WHOM FAILING, to the faid A fenior his nearest lawful heirs and assignees whomsoever, heritably and irredeemably, in due and competent form as effeirs; always with and under the express reservations, conditions, provisions, restrictions, limitations, clauses irritant and resolutive, hereinaster contained, and no otherwise, viz. RESERVING AL-WAYS to the said N her liferent right to the said lands

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, as also, referving to the lands of faid A fenior, his liferent right, use and interest of : AND FURTHER, REthe faid lands of SERVING to him full power and liberty, at any time in his life, and even on deathbed, to burden and affect the lands and others above mentioned, and the faid B, and the heir of this prefent marriage, and other heirs of tailzie abovementioned, with fuch a fum of money as he shall think fit to his other children, and for payment of the debts justly due by him, the same not exceeding the fum of , and which is not to bear interest on the said lands and estate, or upon the said A junior or his foresaids, until after the death of the faid A fenior: AND FURTHER, it is hereby PROVIDED and DECLARED—(here the conditions of the entail were inserted)—ACTS, instruments, and documents in the premises to take, and, generally, every other thing in the premifes to do, which the faid A fenior and A junior might have done themselves, or which to procurators in fuch cases is known to belong; ratifying hereby, and confirming, whatfoever their faid procurators shall lawfully do or cause to be done in the premiles. AND FURTHER, the faid A fenior binds and obliges him and his foresaids to free and relieve the faid A junior and his foresaids of all debts and deeds contracted or done by him or by his predeceffors, and of his childrens' provisions, so far as the faid debts, deeds and provisions, shall exceed the

with which he has the foresaid sum of the power of burdening the faid lands and estate: AND the faid A fenior and A junior, assign, transfer and dispone, to and in favour of the said A junior, and his heirs male and of tailzie above mentioned, under the refervations, conditions, provisions, restrictions, clauses irritant and resolutive above specified, NOT ONLY the whole title deeds of the faid lands, and whole clauses, tenor, and contents thereof, with all that has, or is competent to follow thereon; BUT ALSO, the rents of the faid lands and others for this current year, and for all years and terms thereafter; EXCEPTING and reserving always in favour of the faid A fenior, the rents and duties of the lands and others forefaid, during his life, in terms of the refervation foresaid; as also reserving the foresaid liferent provision to the said N: AND FURTHER, in con-TEMPLATION of the faid marriage, the faid A junior, hereby binds and obliges himself and his heirs and fuccessors whomsoever, to make payment to the younger child or children of the faid marriage, beside the heir succeeding to the said lands and estate, or to the daughter or daughters. of the faid marriage, in case of their being excluded from the fuccession by the heir male of any sub-, sequent marriage of the said A junior, of the sums. of money following, viz. if one daughter or younger; child, the fum of ; if two, &c. to be divided, the faid respective provisions amongst the A a 4 two

two or more daughters, or younger children, in fuch proportions as the faid A junior shall appoint by a writing under his hand; and, failing of fuch writing, the same to be divided equally amongst the daughters or younger children, and which provisions shall be payable to the said children at the first term of Whitsunday or Martinmas after their respective marriages or majorities, whichever of them shall first happen, with a fifth part more of the faid portions of liquidated penalty in case of failure, together with the 'due and ordinary interest of the said portions from the faid terms of payment during the not payment thereof; And, in the mean time, until the respective terms of payment of the faid portions, the faid A junior BINDS and OBLIGES him and his foresaids, to aliment, educate and maintain the faid children, fuitable to their degree and station; AND WHICH PROVISIONS, in favour of the faid younger children or daughters of the marriage, are hereby declared to be in full of all legitim, portion natural, executry, dead's part, or whatever elfe they can ask through the death of the said A junior their father: For which causes, and on the other part, the faid B, &c .- (here the conveyance by the wife and her father will be inserted)-AND FURTHER, it is hereby AGREED by both parties, that although this present marriage should happen to dissolve by the death of either party within the space of year and day after the folemfolemnization thereof, and without a living child procreated of the fame, the provisions in favour of the husband and wife respectively shall notwithstanding subsist in full force, any law or custom to the contrary notwithstanding; AND LAST-LY, it is hereby AGREED, that execution shall pass hereon, at the instance of

or any one of them, and, failing them by death, at the instance of the nearest heir of any of them, against the said A junior or his forefaids, for implement of the provisions hereby conceived in favour of the faid B and the heirs and children to be procreated between them: Fur-THER, the faid A fenior, and the faid A junior, with one advice and confent, and the faid A fenior, with confent of, and taking burden on him for the faid N his spouse, DESIRE and REQUIRE and you each of you, jointly and feverally, their bailies in that part, hereby specially constituted, that, on fight hereof, ye pass to the grounds of the lands and others forefaid, and there give and deliver to the faid B liferent state and fasine, actual, real and corporal possession, of all and whole the forefaid annuity of yearly, to be uplifted and taken under the restrictions and qualifications foresaid, at two terms in the year, Whitsunday and Martinmas, by equal portions, furth of all and whole the lands and others foresaid, or furth

of any part or portion thereof, first and readiest of

the rents thereof, beginning the first term's payment thereof at the first term of .Whitsunday or Martinmas after the death of the said A junior, for the half year ensuing, and so forth, termly and continually thereafter, during the lifetime of the faid B; As ALSO, of the faid manor-place, offices, yards, orchards and others foresaid, as the same are presently possessed by the said A senior in liferent as aforefaid; AND THAT by delivery to the faid B, or to her certain attorney in her name, bearer hereof, of earth and stone of the ground of the faid lands and others above mentioned, and a penny money for the faid annuity, and all other fymbols requisite and necessary in such cases, and of earth and stone of the ground of the said manorplace and others; and this in nowife we leave undone; which to Do, they commit to you, jointly and severally, their full power by this precept of fasine, directed to you for that effect. In wit-MESS WHEREOF, &c. &c.

EXAMPLE III.—Contract of marriage where the wife, possessed of an entailed estate, provides her husband in a liferent, and her younger children in provisions, in terms of the conditions of an entail.

It is contracted, agreed and matrimonially ended, betwixt the parties following, viz. A

Esq.

Esq. on the one PART, and B, with the special advice and confent of C the fole acting tutor of the faid B nominated by her father, on the other part. in manner following; THAT IS TO SAY, the faid A hereby BINDS and OBLIGES him, his heirs, executors, and successors whomsoever, to PROVIDE and SECURE the whole effects he is now possessed of, or which he may afterwards acquire or fucceed to during the dependency of the marriage, to to the extent of Sterling, the rights and fecurities of which he shall take to himself and the faid B, in conjunct fee and liferent, for her liferent use allenarly, and to the children of the said marriage in fee, to be divided amongst the faid children in fuch proportions as the faid A shall at any time appoint, by a writing under his hand; and, failing him by death, without having made any fuch division, in such proportions as the said B shall appoint by a writting under her hand; and, failing of fuch division by either of the said A and B, the faid fum shall divide equally amongst the children of the said marriage, other than the heir herein after described, who shall be alive at the term of payment after specified; with this provision, that if there be only one child at the faid term of payment, other than the heir foresaid, that child, whether male or female, shall be entitled to the sum of of the foresaid provision, and to no more; and in case there shall be two such children, other than the

the faid heir then in life, they shall be entitled Sterling of the faid each to the fum of provision, the remainder, in either of these cases, being at the disposal of the said A; WHICH PRO-VISION the faid A BINDS and OBLIGES him and his foresaids, to pay to the said children other than the faid heir, at the first legal term of Whitfunday or Martinmas after the death of the longest liver of the said A and B, with a fifth part more of each respective sum of liquidated penalty in case of failure, and the legal interest of the faid provisions, from and after the faid term of payment during the not payment thereof; and in case of the dissolution of the said marriage by the death of either of the faid parties, and that the party furviving shall happen to enter into a fecond marriage, the party furviving and marrying again shall thereby have lost the power of dividing the faid provision amongst the faid younger children, whether the faid division may have been executed prior or posterior to the fecond marriage: And whichever of the faid parties shall survive, the surviver shall be bound, as he or she hereby bind and oblige themselves respectively, to aliment and educate their faid younger children until their several provisions fall due; WHICH PROVISIONS, conceived in favour of the faid younger children, are hereby declared to be in full of all they can demand, as bairns' part of gear, legitim, portion natural, or in any other way whatfoever.

whatfoever, by and through the decease of the faid A their father: FURTHER, the faid A HERE-BY ASSIGNS and DISPONES to and in favour of the faid B. in the event of her furviving him, and there shall happen to be no children of the marriage, or none alive at the dissolution thereof, the just and equal half of the household furniture which shall pertain and belong to him at the time of his death, heirship moveables included a but which half shall be restricted to one third of the faid household furniture in case there shall be a child or children alive at the diffolution of the marriage by the death of the faid A; PROVIDING ALWAYS, that the faid half or third of the faid household furniture shall be redeemable by the heirs of the faid A within the space of fix months after his death, by payment to the faid B, her heirs, executors, or assignees, of the sum of Sterling, if her right extend to one half of the faid furniture, and the fum of if it extend to one third thereof; BUT UNDER this CONDITION. that if the faid power of redemption shall not be used within the foresaid space of six months after his death, the fame shall, by the lapse of the said time alone, and without any declaratory action, become lost and extinct; and the faid A hereby declares the possession and right of the said B in the faid furniture to be thereafter absolute and complete: WHICH PROVISIONS in favour of the faid B, she has accepted, and hereby accepts, in full

of liferent, conjunct fee, terce of lands, half or third of moveables, executry, or other claims or demands competent to her or her heirs on the dissolution of the faid marriage; For which causes, AND ON the OTHER PART, the faid B with confent foresaid, hereby binds and obliges herself to make due and lawful refignation of ALL and WHOLE the lands, &c.—(here describe them)—in the hands of her immediate lawful superiors thereof, IN FAVOUR. and for new infeftments to be made. given, and granted to herfelf, and failing her, to the heirs male of her body to be procreated in this present marriage, and the heirs male of their bodies; whom failing, to the heirs male to be procreated of the body of the faid B in any fubfequent marriage; WHOM FAILING—(here the destination of the entail will be inserted)—as specified and contained in the deed of entail, of the whole lands and others above mentioned, made and granted by the faid deceased B, which deed of entail bears date, and is recorded ALWAYS WITH and UNDER the whole conditions. provisions, limitations, burdens, and whole clauses irritant and resolutive, contained in the deed of entail as more particularly after mentioned, To BE HELD of the faid B her immediate lawful superiors thereof, by the same tenure, and as fully and freely in all respects, as she, her predecessors and authors, held, or might have held the fame themselves; And further, the said B, in virtue

of the powers vested in her by the said deed of entail more particularly after specified, HEREBY BINDS and OBLIGES her, and her heirs and fuccesfors, duly and validly to infeft and seife the said A her husband, by way of liferent locality in the liferent of ALL and WHOLE—(here specify the lands) -which lands and others so to be liferented by the faid A, amount, in whole, to a just and equal third part of the lands and estate contained in the said deed of entail, as the same are at present rentalled. agreeably to the judicial rental of the faid estate taken before the sheriff of upon the : AND WHICH LANDS and others day of forefaid, are hereby declared to be burdened with a proportional part of the minister's stipend, schoolmaster's salary, feuduties, cess, and other public and parochial duties, of whatever kind the same may be, affecting the faid entailed estate, effeiring and corresponding to the said liferented lands; AND which liferented lands are FURTHER BUR-DENED with the payment of a just and equal third part of the interest of all and whatever debts may affect the said entailed estate, and that yearly, until the faid debts shall be paid off and discharged: WHICH INFEFTMENT OF LIFERENT LOCALITY in favour of the faid A, shall and may be expede, either by refignation or by confirmation, the one thereof to be held of the said B, her heirs and fucceffors, in free blench, for payment of a penny Scots money, at the term of Whitfunday yearly.

yearly, if required, and the other to be held from the said B of her immediate lawful superiors thereof, in the same manner, and for payment of the same duties and services, and as freely as she holds or may hold the same herself, and that either by resignation, or confirmation, or both, the one without prejudice to the other. And, the infestment in favour of the said B, and the heirs of tailzie and provision before specified, and the infestment of liferent locality as aforesaid, in favour of the said A, may both be expede by resignation; the said B, with consent foresaid, hereby makes, constitutes and ordains

jointly and feverally, to be her lawful and irrevocable procurators, for her, and in her name, to appear before her immediate lawful superiors of the lands and others foresaid, or before their commisfigners having power to receive refignations, and thereupon to grant new infeftments; and there, duly and lawfully, by staff and baton as use is, to REsign and surrender, as the faid B, with confent foresaid, resigns, surrenders, simpliciter upgives, overgives and delivers, all and WHOLE the lands and others forefaid, as the same are herein particularly described, with all right, title, interest, claim of right, property and possession, which she the said B. her predecessors or authors, had, have, or can pretend thereto, IN THE HANDS of my faid superiors, or of their commissioners foresaid,

foresaid. IN FAVOUR and for new infeftments of the fame to be made to the faid B and to the heirs male of her body in her marriage with the faid A, &c.—(here the destination was copied from the entail)—BUT ALWAYS WITH and UNDER the provisions, conditions, burdens, limitations, clauses irritant and resolutive above referred to, and herein after expressed, viz.—(here the conditions were verbatim inserted)—As Also in favour and for new liferent infestment of ALL and WHOLE—(here the liferent lands were specified)—to be made to the faid A during all the days of his lifetime, in due and competent form, as effeirs; PROVIDING AL-WAYS, as it is hereby expressly provided and de-CLARED, that the faid lands to be liferented by the faid A as faid is, are and shall be burdened with a third part of the minister's stipend, schoolmaster's salary, feu duty, cess, and other public and parochial burdens affecting the faid entailed estate, AND ALSO with the payment of a just and equal third part of the interest of all and whatever debts affect the faid entailed property; of which the liferented lands are a part; and that yearly, until the faid debts shall be fatisfied and paid off; ACTS, INSTRUMENTS, and documents thereupon to take, and generally every other thing in the premises to do, which the said B could have done herfelf, or which to the office of procuratory in such cases is known to belong; ratifying hereby, and confirming, whatever my faid VOL. V. procurators

procurators shall lawfully do or cause to be done in the premises; WHICH PROVISION of liferent lecality aforesaid, conceived in favour of the faid A, he by these presents accepts of in full of all which he can ask, claim, or demand, in name of courtely, or any other manner of way whatfoever by or through the predecease of the said B; MOREOVER, the said B with consent foresaid, and in virtue of the powers committed to her by the faid deed of entail, hereby BINDS and OBLIGES her, and her heirs and fuccessors, without the benefit of discussion, to pay to the younger child or children to be procreated of the foresaid marriage betwixt her and the faid A other than the heir; or to the daughter or daughters of the faid marriage, if they shall be excluded from the succession by the terms of the faid entail, the fum of and in case there shall be more than one younger child of the said marriage other than the heir, the faid fum of Sterling, shall be divisible amongst the faid younger children, as the faid B shall appoint, by a writing under her hand; and in case of her neglecting to make such division, the said A. in case of his surviving her, shall be entitled to divide the same by a writing under his hand; and, should he also fail to make such a division. the faid provision shall divide equally amongst the faid younger children; WHICH PORTION shall be payable to the faid younger children at the first term of Whitsunday or Martinmas after his,

her, or their attaining respectively the age of 21 years, or their marriage respectively, whichever of them shall first happen, with a fifth part more to each of them of penalty in case of failure, and interest of the said provision or provisions from and after the death of the faid B: PROVIDING AL-WAYS, that in case the said younger child or children shall attain majority, or be married during the lifetime of the faid B, the payment of the portion or portions shall in that case be superseded till the death of the faid B: And in case it shall happen, that there are only daughters of the faid marriage, one or more, who, by the destination of the foresaid entail, shall be excluded from the fuccession of the said entailed estate: it is hereby provided and declared, that the daughter so excluded shall be entitled to draw her share of the said provision in favour of younger children, at the term, and under the penalty, and with interest, as before expressed; BUT WHICH PROVISION shall in that case also be subject to the power of division above expressed; AND it is also provided and declared, that in the event of the dissolution of the said marriage by the death of either of the faid parties, and that the party furviving shall enter into a second marriage, the party furviving and marrying a fecond time, shall, on his or her fo marrying, lofe the power of dividing the faid provision of provided to the younger children of the faid marriage, in terms of B b 2 the

the faid entail: which power of division shall, in that case, cease and be at an end, and that although the act of division should have taken place prior to the party's entering into the faid fecond marriage; AND WHICH PROVISIONS aforesaid, conceived in favour of the faid younger children, are hereby declared to be in full fatisfaction to the faid children of all they can ask or claim, as bairn's part of gear, legitim, portion natural, or any other manner of way whatever through the decease of the said B; PROVIDING: ALWAYS, as it is hereby expressly provided and declared. that the debts contracted on the faid estate by the deceased B, father to the said B, must first be fully fatisfied and paid, before the children of the prefent marriage shall be entitled to draw the sum of provided to them by this contract, under the powers given to the faid B by the faid entail; AT LEAST they shall only, until that happens, be entitled to draw the furplus of the faid over and above the debts confum of tracted upon the faid estate by the said deceased. B, so far as the same are still outstanding and unpaid; but as foon as the faid debts contracted by the faid B are paid off, the residue of the said fum of shall then become due and payable to the faid children in manner above expresfed: Providing Also, and it is hereby expressly PROVIDED and DECLARED, that no adjudications

to be led against the said tailzied estate, for all or

any of the provisions with which the said heirs of entail are burdened in manner foresaid, shall ever expire: AND FURTHER, it is also PROVIDED and DECLARED, that the foresaid provisions, made and fettled by the said B on the said A, and upon the children of the faid marriage, shall be effectual, and take place, only in fo far as they are confistent with the conditions and limitations of the faid deed of entail; AND if any of the faid provisions shall be found to be disconform thereto, or inconfistent with the powers vested in the faid B by the faid deed of entail, it is hereby expressly PROVIDED and DECLARED, that the said provisions shall be restricted, and they are accordingly hereby restricted to those precise provisions which, by the faid deed of entail, she is entitled to confer on her faid husband and children respectively, and to no greater or other extent: AND LASTLY, it is ordained, that execution shall pass, if needful, hereupon, at the instance of L, M, N, or either of them, against the said A for implementing and fulfilling of the obligations and provisions above written, contained in favour of the faid B. and the children to be procreated of the faid marriage: And both parties consent. &c .- (Registration for diligence, and precept of sasine.)

Example IV.—Contract of Marriage where the husband provides in general the whole conquest to himself and his wife in conjunct fee and liferent, and to the children of the marriage; with the exception of entailed property to which the husband may succeed. The wife's estate vested in trustees to the exclusion of the husband's Jus Mariti; a power of sale given if consistent with the nature of her titles; and the conditions prescribed under which the trustees shall distribute the annual income, and divide the fee of the estate, with other usual clauses.

IT IS CONTRACTED, &c.—(in common form)—
IN CONTEMPLATION of which marriage, the faid
A hereby BINDS and OBLIGES him, his heirs, executors and fucceffors whomfoever, to PROVIDE
and SECURE all lands, heritages, and moveable
effate or money which he shall conquest, or acquire, or succeed to, during the subsistence of the
present marriage, to and in favour of himself and
the said B, in conjunct see and liferent, and to the
children of the present marriage; whom failing,
to his own nearest heirs and assignees whomsoever; and declaring hereby, that all heritage
and moveables which the said A shall be possessed of at the dissolution of the marriage, shall be
understood to fall under this clause of conquest;

BUT PROVIDING that the same shall not extend to any lands tailzied in terms of the act 1685, or heritages to which the faid A may succeed as heir of entail to any of his predecessors; AND DECLAR-ING ALSO, notwithstanding the said clause of conquest, that it shall be in the power of the said A. NOT ONLY to divide the subjects falling under the faid clause of conquest amongst the children of the marriage, at his pleasure, BUT ALSO to make an entail thereof, under such conditions as he shall think fit, and to fence the same with proper irritant and resolutive clauses: And in case the said B shall happen to survive the faid A, he, in that event, dispones to her the whole household furniture, filver plate and heirship moveables included, which shall pertain to him at the time of his death; FOR which causes, and on the other part, and for fecuring the support of the parties and the issue of this marriage, the said B, with advice and confent forefaid, hereby, in as far as, by the titles and rights to her lands and estate after-mentioned she is empowered to do, and no further, alienates and difpones from her, to and in favour of C, D, E, and F, the acceptors or acceptor, furvivors or furvivor of them, as trustees, with the powers, and for the uses and purposes after-mentioned, and with and under the conditions and provisions after specified, allenarly, and nootherwife, ALL AND WHOLE (here the lands were described)—BUT ALWAYS in TRUST, with the powers, and for the uses and purpofes

B b 4

pofes after-mentioned, and with and under the conditions and provisions after specified, allenarly, and no otherwise, and which are hereby appointed to be inferted in all the charters and infeftments to follow hereon in favour of the faid truftees, viz. FIRST, that the majority of the acceptors of the faid trustees alive for the time shall be SECOND, that if the furvivor of the faid trustees shall please, he may assume two new trustees, and, failing such assumption, the trust shall devolve on the heir at law of the surviving trustee; and the survivor of the trustees assumed, or the heir of the surviving trustee, shall, in every case, have the same powers as if they had been herein named. THIRD, the faid trustees shall have power to appoint a factor for uplifting the rents and managing the faid lands and estate, with a fuitable falary, for whom they shall be no further answerable than that he was held and reputed folvent at the time of his nomination; and the faid trustees shall have the fole power of passing the faid factor's accounts. Fourth, that the faid trustees shall be obliged to apply the neat produce of the rents of the faid estate (and which rents are hereby declared to be free of, and not subject to the jus mariti of the said A which is hereby expressly excluded), after paying the public burdens, expenses of management, and interest of debt affecting the faid lands, for the aliment of the faid B and her family during the fubfishence to a strategia de la companya de la

of the marriage, and for that purpose to cause pay the same to her from time to time accordingly: BUT DECLARING, that as the faid rents are hereby freed from the jus mariti of the faid A, so the faid B's receipt therefore, without his confent, shall be sufficient; and after the dissolution of the marriage by death, the faid rents shall be paid to the furvivor of the faid A and B, for their own aliment, and the aliment of the children, if any be, of this present marriage. FIFTH, as the said B's titles to the said estate are not yet completed. but are proposed to be made up, partly by service and partly by an adjudication in implement, on a trust disposition, in name of the faid trustees are entitled to employ such parts of the rents as may be requifite for defraying that expense; and when the faid titles are completed, if the pretended tailzie of the said estate shall be found to be ineffectual, and not to bar the faid B from felling the faid lands and estate, then the faid trustees are hereby declared to have power. if they see fit, to sell the same by public voluntary roup, on fix months' previous advertisements in the Edinburgh newspapers, once every week, and to grant the necessary disposition to the purchasers, and to receive the price and discharge the purchasers thereof, who shall have no title to look after the application of the price; and the trustees, after paying off the debts affecting the faid estate, and the expenses attending the sale and management, management, shall be obliged to employ the remainder of the faid price free of the jus mariti of the faid A, and so as to make the interest thereof applicable to the same purposes to which the rents of the faid lands are destined by the preceding SIXTH, that the faid B and A, and regulations. the furvivor of them, in case the said estate is found to be free of the faid entail, or fold, shall have power to appoint and ascertain the shares which the children of the marriage shall have of the faid estate or price thereof, after the death of the survivor of the said B and A, and shall also, if they chuse so to do, both have power to cause the faid trustees settle the same, or the price thereof, on the heirs of this marriage, under fuch conditions, clauses irritant and resolutive, as they shall fee fit. AND LASTLY, in case the said lands shall be found to be free from the faid entail, on that the same is fold as aforesaid, AND that the children of the marriage shall fail during the life of the said A, and that he shall also survive the said B, THEN the said trustees shall be BOUND and OBLIGED to DISPONE, as in these joint events the said B, with consent foresaid, hereby DISPONES to the said A, his heirs and affignees whomfoever, the just and equal half of all and whole the lands and others above described, burdened with an equal proportion of the debts; or, in case of their having been fold under the powers hereby vested in the faid trustees, the just and equal half of the price thereof,

thereof, after payment of the debts affecting the faid estate; AND the other half of the said lands or price thereof, the said trustees shall be obliged to dispone to the heirs of the said B.

This closes the conditions of the Trust. The remaining part of the Contract consists of

An obligation to infeft the trustees, with a procuratory of refignation for that purpose.

An affignation to the mails and duties and title deeds.

A declaration that the provisions in favour of the wife and children are in full of all jus relictæ and legal claims of the wife, and of the claims of legitim, &c. competent to the children; 'EXCEPTING ALWAYS their fuccession in competition with collaterals, as accords of law.'

A nomination of persons at whose instance execution shall pass.

A declaration that the provisions shall take place, notwithstanding the dissolution of the marriage, within year and day, and without a living child.

Precept of sasine.

EXAMPLE

Example V.—Contract of Marriage where the husband is a Nobleman, and the family estate provided by the ancient titles in a certain line of succession—Providing his wife in a jointure of 1000l. Sterling, payable out of the entailed lands, as far as the conditions of the entail permit, and the residue of the jointure secured on a separate estate—Giving a sum in place of mournings, and of all the widow can claim—Providing for the younger children—And on the other part, a conveyance of certain lands by the wife, with the necessary clauses for carrying the whole into effect.

It is contacted, agreed and finally ended, between the Right Hon. A Earl of A, &c. on the one part, and B, eldest daughter of B, on the other part, in manner following; that is to say, the said parties have agreed to accept, and do hereby accept of each other for lawful spouses, and bind and oblice themselves to solemnize their marriage in due form; in contemplation of which marriage, and in regard that the earldom and estate of A, and other lands and estates which belonged to the said A, stand already settled on the said Noble Earl, and the heirs whatsoever of his body, by a deed of entail made and executed by the said

dated

· dated , and registered ; in virtue of which entail, the faid earldom and estate will descend to the heirs after mentioned, without any other destination thereof; the faid A, Earl of A, hereby GIVES, GRANTS and DISPONES, his lands of F and others herein particularly after mentioned, to and in favour of himself, and the heirs male to be procreated between him and the faid B his promised fpouse; whom failing, to the heirs male to be procreated of the body of the faid Earl in any fubfequent marriage; whom failing, to the heirs female to be procreated between him and the faid B: whom failing, to the heirs female to be procreated of the body of the faid Earl in any fubfequent marriage; whom failing, to the faid noble Earl, his heirs and affignees whomfoever; Bur UNDER this CONDITION and PROVISION, that the eldest daughter or heir female shall succeed without division, and exclude heirs portioners; and with and under the burden of the liferent provifion hereinafter provided to the faid B; IN WHICH LANDS and others the faid Earl BINDS and OBLIG-Es himself to infeft and seise himself and the heirs of his body in the order before mentioned; and for that purpose he hereby MAKES, CONSTITUTES and APPOINTS

and each of them, jointly and feverally, his lawful and irrevocable procurators; giving hereby, and committing to them, full power,

power, for him, and in his name, in due form of law, TO RESIGN and SURREMDER, as he hereby RESIGNS and SURRENDERS, UPGIVES, OVERGIVES and DELIVERS, ALL and WHOLE the lands of F-(here they were particularly described as in the tithe deeds)-in the hands of his immediate lawful superiors of the same, or of their commissioners, in FAVOUR and for new infeftments of the same to be made, given and granted, to and in favour of the faid Earl, and the heirs male to be procreated of this marriage; WHOM FAILING, to the heirs male of his body in any subsequent marriage; whom FAILING, to the heirs female to be procreated of this present marriage; WHOM FAILING, to the heirs female of the body of the faid Earl in any subsequent marriage; WHOM FAILING, to the faid Earl, his heirs and affignees whomfoever, heritably and irredemably; under this condition and provision. that the eldest daughter or heir female shall succeed without division, and exclude heirs portioners, and with and under the burden of the liferent annuity hereafter provided to the faid B; acts, instruments and documents on the faid refignation to ask and take, and, generally, every other thing to do, in relation thereto, which the faid Earl could do himself were he personally prefent, or which any other procurator could do in the like case; ratifying hereby, and approving whatever his faid procurators shall lawfully do, or cause to be done in the premises, in virtue here-

of; AND the faid Earl hereby binds and obliges himself, his heirs and fucceffors, to make payment to the faid B during all the days of her life, from and after his death, of an annuity of roool. Sterling, at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first term's payment of the said annuity at the first term of Whitsunday or Martinmas which shall happen next and immediately following his death, and continuing the payment thereof yearly thereafter during all the days of her lifetime, with 100l. Sterling of penalty for each half year's annuity in case of failure, and interest of the said annuity, from the respective terms of payment thereof, until payment of the fame: And in payment pro tanto of the faid liferent annuity, the faid Earl BINDS and OBLIGES himself and his forefaids, on their own expense, to infeft and seise the faid B in liferent, during all the days of her lifetime, from and after his death, in all and whole these parts and portions of the said entailed estate of A, viz. ALL and WHOLE (here the lands were particularly described)—which parts and portions of the faid entailed estate of A yield at prefent the fum of of yearly rent, and is that proportion of the estate of A which, by the deed of entail before mentioned, the heirs of tailzie are empowered to grant liferent infeftments of to their wives: AND, for the said B her' further fecurity of the remainder of the faid liferent annuity of 1000l. Sterling, being the faid Earl hereby BINDS and OBLIGES himself and his foresaids, on their own proper charges and expenses, to infert and seise her in liferent, during all the days of her lifetime, from and after his death, in ALL and WHOLE an annuity of Sterling, to be uplifted and taken at the faid two terms in the year, Whitsunday and Martinmas, by equal portions, furth of ALL and WHOLE the faid lands of F—(here they were repeated as in the title deeds)—or furth of any part or portion of the faid lands and others, readiest mails, farms, profits and duties of the same; beginning the first term's payment of the said annuity at the first term of Whitfunday or Martinmas which shall happen next and immediately after the death of the faid Earl, and continuing the payment of the faid annuity half yearly, at each term of Whitfunday and Martinmas thereafter, during the life of the faid B; BUT with and UNDER this CONDI-TION and PROVISION, that in case the said lands of

, part of the entailed estate of A, allowed to the said B in liferent, shall, upon a new set thereof during the subsistence of the intended marriage, or thereaster during the life of the said B, yield a clear rent of 1000l. Sterling, free of all deductions, then the before mentioned annuity shall cease as long as the said lands shall yield such rent; or, in case the said liferented lands shall yield a higher rent than the present sum

of.

the before mentioned annuity out of Λf the faid lands of F, shall cease and become void to the extent of the difference betwixt the fald. prefent rent and the rent to which the faid lands shall rife, and that during the time that they shall continue to yield fuch higher rent; it being the intention of the parties, that the jointure to be paid to the faid B in case of her surviving the faid Earl, shall neither exceed nor fall short of the faid fum of 1000l. Sterling, free of all deductions: TO BE HELD the faid liferent lands and others before mentioned, by two feveral infeftments and manners of holding; THE ONE thereof to be HILD of the faid noble Earl, his heirs and fuccessors, and the other from them of their immediate lawful fuperiors, both in free blench, for payment of one penny Scotch money on the ground of the faid lands, at the term of Whitfunday yearly, in name of blench farm, if asked only, and that either by refignation or confirmation, the one without prejudice to the other; AND, for ACCOMPLISHING the faid INFEFTMENT by RESIG-WATION, the faid A Earl of A hereby MAKES and CONSTITUTES

and each of them, jointly and feverally, his lawful and irrevocable procurators, giving hereby, and committing to them, full power, for him, and a his name, in due form of law, to resion and surrent pers, upgives, overgives and delivers, all and vol. v. \* Cc whole

WHOLE—(here were described generally the lands given to the said B in liferent, and forming part of the entailed estate of A)—lying as before mentioned; AND ALSO ALL AND WHOLE the said annuity of

Sterling yearly, to be uplifted and taken: at the faid two terms in the year, Whitfunday and Martinmas, by equal portions, furth of ALL. and fundry the faid lands of F-(shortly described): -as more particularly before described, or furthof any part or portion thereof, readiest rents and duties thereof, beginning the first term's payment at the first term of Whitsunday or Martinmas which shall happen next and immediately after the death of the faid Earl, and continuing the payment thereof, half yearly, at each term of Martinmas and Whitfunday thereafter, during the life of the faid B; in the hands of the faid Earl, his immediate lawful superiors of the lands and others before mentioned, or of their commisfioners; In favour and for new infeftments of the faid lands and annuity, to be MADE, GIVEN, and GRANTED to the faid B in liferent, during all the days of her lifetime, from and after the death of the faid Earl; BUT ALWAYS with and under the conditions and provisions before mentioned, that the faid liferent annuity of shall cease. and become void, in as far as the rents of the said liferented lands of the faid estate of A shall exceed the prefent rent of and as long only as they shall exceed that term, so that the jointure

jointure hereby provided to the faid B shall never exceed nor fall short of the said sum of 1000l. Sterling yearly, free of all deductions; acts, instruments, and documents in the faid refignation, to ask and take, and generally every other thing to do, in relation to the premifes. which the faid Earl could do himself, if personally prefent, or which any procurator can do in the like cases; ratifying hereby and approving of whatever his faid procurators shall lawfully do or cause to be done in the premises; AND the . faid A Earl of A, binds and obliges himself and his foresaids, to WARRANT these presents, with the infeftments to follow hereupon, to be good, valid, and fufficient, and the lands and annuity before mentioned, to be free, fafe, and fure to the faid B, from all burdens, incumbrances, and grounds of eviction, at all hands, and against all mortals, as law will; AND the faid Earl hereby Assigns and conveys to the faid B, her heirs, executors and affignees, the rents and duties of the (part of the estate of A)—conlands of veyed to her in liferent, for all years and terms during her lifetime, from and after his death, and as much of the first and readiest of the rents of the faid lands of F which shall be due at the time of his death, and shall fall due thereafter during the lifetime of the faid B, as will completely fatisfy and pay her and her foresaids of the faid liferent annuity of , or as much C c 2 thereof

thereof as shall become due under the clauses foresaid, with termly penalties, if incurred; surrogating hereby and substituting the said B and her foresaids, in his full right and place of the premises, with sull power to her and them to uplift, receive, and discharge or convey the said rents, and, if necessary, to sue for payment of the same, and generally every other thing to do in relation to the premises which he could do himself, or which any assignee could do in the like case; and, over and above the said liferent annuity, the said A Earl of A, hereby binds and oblices himself and his foresaids to pay to the said B his promised spouse, or her foresaids, in case she shall happen to survive him, the sum of

in lieu and place of her mournings, allment from the time of his death to the first term of Whitfunday or Martinmas thereafter, and her share of moveables, and every thing else which fhe can claim by and through his death, and that at the first term of Whitsunday or Martinmas which shall happen next after the death of the faid Earl, with one fifth part of the faid fum of penalty in case of failure, and interest of the said principal fum of from the faid term of payment thereof, until payment of the same; WHICH LIFERENT and ANNUITY before mentioned, with the faid fum of the faid B does hereby accept of in lieu and place of all terce of lands, half or third of moveables, and every other claim

claim competent to her at the death of the faid Earl her husband, or which might be competent to her executors or nearest of kin, upon her death, if the shall predecease him: AND FURTHER, in case there shall be only one daughter of the said intended marriage, and fuch daughter does not fucceed as heir to the earldom, lands and estate before mentioned, by the destination thereof before specified; or in case there shall be an heir procreated of the faid intended marriage, and a younger child or children, fons or daughters. the faid A Earl of A hereby BINDS and OBLIGES himself and his heirs, as well male, tailzie, conquest, and provision, as heirs of line, and his fucceffors whomfoever (renouncing hereby the benefit of discussing his said heirs), to pay to such daughter not succeeding as heir to the faid earldom, lands and estate, or to such younger child or children, fons or daughters, other than the heir, the fum of 600ol. Sterling, or fuch a capital fum as shall correspond to 300l. of yearly interest for the time, and that at the first term of Whitfunday or Martinmas which shall happen after his death; with a fifth part more of the faid principal fum of penalty in case of failure; and interest of the said principal sum, from the death of the faid Earl to the said term of payment, and thereafter until payment of the same; to be divided the faid fum of 6000l. Sterling, or fuch capital as shall yield the said annual income of

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2001. amongst the said children, if more than one shall exist, in such shares and proportions as shall be directed and appointed by a writing under the hand of the faid Earl; and, failing of fuch division, the same shall be divided among the said children equally, share and share alike; under this condition and provision, that no apprising, adjudication, or other legal diligence, shall be led or deduced for payment or fecurity of the fum hereby provided to the child or children of the marriage against the fee and property of the said entailed lands and estate, or any part thereof, or for the interest or penalties corresponding thereto; nor shall it be in the power of the heir to fell any part of the faid entailed lands for payment thereof, nor shall any more than the one half of the rents of the faid entailed lands and estate, in fo far as free and unaffected at the time by liferents and interest of debts, be subjected and liable to any legal execution for payment of the faid provisions; BUT DECLARING, that the half of the free rents of the faid entailed estate, and the persons of the heirs succeeding thereto to that extent, and any other estate, personal or real, belonging to the faid heirs, shall always be subjected and liable to any diligence and execution competent by law, for payment and fecurity of the faid provisions and interest thereof, and penalties corresponding thereto; AND the faid Earl BINDS and oblices himself and his foresaids, to educate and

and aliment the children to be procreated of this intended marriage, fuitably to their rank and quality, until their respective portions and provisions shall become due and payable; which portions and provisions in favour of the children of the present marriage, other than the heir, are hereby declared to be in full payment and fatisfaction to them, of all executry, legitim, portion natural, bairns' part of gear, and every thing else' which they can claim or demand by or through the death of the faid Earl their father, excepting only fuch further provisions or legacies as he shall think proper-to give or bequeath to them by any writing under his hand: FOR WHICH CAUSES and on the OTHER PART, the faid B does hereby give, GRANT, ASSIGN, and DISPONE from her, her heirs and fucceffors, to and in favour of the faid A Earl of A, her promifed husband, his heirs and assignees whomfoever, heritably and irredeemably, ALL lands, heritages, fums of money, heritably or moveably secured, goods, gear, and effects of every kind prefently belonging to her, other than her share, being four eighth parts of a lease of the mines , to which she has right, as heir of provision of the deceased her brother, which share of the faid lease she has, by a deed executed by her of this date, with confent of the faid Earl, her promifed husband, settled upon herself and the said Earl, during their joint lives, and thereafter upon herfelf and the children

to be procreated of her body; whom failing, to her heirs therein mentioned: AND PARTICULAR-. Ly, without prejudice to the faid generality, the faid B does hereby GIVE, GRANT, and DISPONE to the faid Noble Earl and his foresaids, heritably and irredeemably, ALL and WHOLE (here the lands were described)-AND the faid B hereby Assigns and conveys to the faid Noble Earl and his forefaids, NOT ONLY the whole rights, titles, and securities of the lands and others before-mentioned, MADE, GRANTED, and CONCEIVED in favour of her, her predecessors or authors, and particularly, without prejudice to the faid generality, a disposition of three fourth parts of the faid lands, &c. &c. with all that has or is competent to follow on the faid titles hereby particularly and generally conveyed, BUT ALSO the rents and duties of the faid lands and others, for all years and terms resting and in time coming; SURROGATING hereby and fubilituting the faid Earl in her full right and place of the premisses; with power to him to receive, discharge, or convey the faid rents and other fums hereby conveyed, and, if necessary, to sue for payment of the same, and for production and implement of the faid writs and evidents, and generally every other thing to do in relation to the premisses which she could have done herself, before executing these presents; WHICH DISPOSITION and Assignation the faid B BINDS and OBLIGES herself, her heirs and successors, to WARRANT at

all hands and against all mortals, as law will; AND it is hereby covenanted and agreed, that although this present marriage shall dissolve within year and day, without a living child procreated betwixt the parties, yet this present contract shall subsist and be binding on both parties in the whole heads and articles thereof, any law or practice to the contrary notwithstanding. AND LAST-LY, it is hereby covenanted and agreed, that all execution necessary for implement of the provisions conceived in favour of the said B, and the children to be procreated of the intended marriage, shall pass hereon at the instance of

: AND both parties con-SENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on six days' charge, and all other execution necessary, may pass on a decree to be interponed hereto, in common form: And for that purpose they constitute

, their procurators, &c. AND IN ORDER that the faid B may be immediately infeft in the faid lands and annuity before-mentioned, the faid Noble Earl hereby defires and requires you

, and each of you, jointly and feverally, his bailies in that part, hereby specially constituted, that, on sight hereof, ye pass to the grounds of the said lands of

, (part of the entailed estate of A) and there

there give and deliver liferent state and sasine, real, actual and corporal possession, to the said B, of all and whole the said lands of

, .lying, bounded and described in manner foresaid; and that by delivering to the faid B, or to her attorney in her name, bearer hereof, of earth and stone of the ground of the faid lands, and all other symbols usual and necesfary; As Also, that ye pass to the manor-place of F, the place appointed for taking fafine of the faid lands of F, and there give and deliver liferent state and fasine, real, actual, and corporal possesfion to the faid B, of ALL and WHOLE the faid anyearly, to be uplifted and tanuity of ken at the faid two terms in the year. Whitfunday and Martinmas, by equal portions, furth of ALL and SUNDRY the faid lands of F, as beforementioned and described, or furth of any part or portion thereof, readiest rents and duties of the fame; beginning the first term of payment of the faid annuity at the first term of Whitsunday or Martinmas which shall happen next and immediately after the death of the said Earl, and continuing the payment thereof half yearly at each term of Martinmas and Whitfunday thereafter, during the life of the faid B; BUT ALWAYS with. and under the condition and provision before written, that the faid liferent annuity of

Sterling shall cease and become void, in as far as the rents of the said liferented lands shall exceed only as they shall exceed that sum; so that the jointure provided to the said B shall never exceed nor fall short of 1000l. Sterling yearly, free of all deductions; and that by delivery to the said B, or her attorney in her name, bearer hereof, of earth and stone of the ground of the said lands, with a penny money for the said annuity, with all other usual and necessary symbols; and this in noways ye leave undone; which to do, the said Earl of A hereby commits to you full power, by this his precept of saine, directed to you for that purpose. In witness whereof, &c.

## Sect. I. Changes in the Form of the Contract.

## 1. Where the Husband provides a Locality to the Wife.

AND FURTHER, in CONTEMPLATION of the said marriage, the said A BINDS and OBLIGES him and his heirs, of whatever kind, without the benefit of discussion, on his own expense, to insert and seise the said B in liferent, during all the days of her life, after his death, in case she shall happen to survive him, in ALL and WHOLE—(here the lands are described)—TO BE HELD either of the said A, his heirs and successors, in free blench, for payment

ment of a penny Scots money, on the ground of the faid lands, at the term of Whitfunday yearly, if asked only, or from the said A, of his immediate lawful superiors thereof, in the same manner that he holds the same himself, and that either by refignation, or confirmation, or both, the one without prejudice to the other; AND in order that the faid infeftment of liferent locality, in favour of the faid B, may be expede by refignation, the faid A makes, &c. &c.; IN FAVOUR and for new infeftments of the same, to be made, given and granted to the faid B, during all the days of her lifetime, after the death of her faid husband as aforesaid, in due and competent form as effeirs; which lands so to be liferented, are and shall be burdened with a part of the minister's stipend. schoolmaster's falaries, feuduties, cess, and other public burdens, of whatever kind; as also with the payment of a part of the interest of the whole debts which at present affect the , of which whole lands and estate of the faid liferented lands are a part, and that yearly and until the faid debts shall be paid; acts, instruments and documents, &c .- (then follows a clause of absolute warrandice)-AS ALSO, the faid A hereby MAKES and CONSTITUTES the faid B, during all the days of her lifetime after his death, his cessioner and assignee in and to the rents and duties of the faid lands and others provided to her in liferent as faid is; with full power to her,

in case she survive him, immediately on his death to possess the said lands, by drawing the rents thereof, outputting and inputting tenants for her own lifetime, and to do every thing which any differentiate may do by the law of Scotland.—The contract will contain a precept of sasine for infesting the wife in liferent in the said lands, &c. in common form.

Another Example may be given, where part of an entailed estate was given in locality, as well as unentailed property; and an obligation to make these two rights equivalent to a certain liferent payable to the widow, and rising and falling in certain events.

AND FURTHER, in CONTEMPLATION of the faid marriage, the said A BINDS and OBLIGES him, his heirs and successors, to insest and seise the said B in liferent during all the days of her lifetime, after the death of the said A, in ALL and whole the lands and others aftermentioned, being part of the said entailed estate, equal to a fourth part of the free rents thereof, after deduction of the interest of debts, and all other burdens affecting the same, in terms of the provisions of the said entail: As Also in ALL and whole—(here describe the lands)—being the estate of the said A, not subject to the said entail, and that also in liferent to the

faid B, after her faid husband's death, PROVID-ING ALWAYS and DECLARING, that in case the faid lands and others after mentioned, which are reckoned a fourth part of the free rent of the faid entailed estate, shall be found to exceed the real free fourth part thereof, after deduction as aforefaid, then the liferent infeftment to follow hereon shall be restricted to what shall be found to be the free fourth part of the rent of the faid estate, in terms of the faid entail, to be held of the faid A or of his immediate lawful superiors thereof, in free blench, for payment of a penny Scotch money, on the ground of the faid lands, if asked allenarly, and that either by refignation or confirmation, or both: And for obtaining the faid infeftment by refignation—(here a procuratory of resignation was inserted, with a clause of absolute warrandice, and then the contract proceeds)—As ALSO, the faid A hereby MAKES and CONSTITUTES the faid B, during all the days of her lifetime, from and after his death, his cessioner and assignee, IN and to the tents and duties of the faid lands provided to her in liferent, as faid is, with power to her, in case she survive him, immediately on his death to possess the faid lands, by drawing the rent thereof, and to output and input tenants, and do every thing thereanent which any liferentrix, by the law of Scotland, may do in the like cases: And whereas it was communed upon and agreed betwixt the faid parties, that the faid

B, in the event of children of the faid marriage existing at the dissolution thereof, should have 350l. Sterling of yearly liferent; and in case of no children then existing, or that those existing may thereafter die without issue; she should have 400l. of yearly liferent; THEREFORE, and in case her liferent right of the fourth part of the faid entailed estate, and her liferent right of the whole unentailed estate, above mentioned, should not amount to as much as will fatisfy and pay to the faid B the faid respective liferents of 350L or 400l. Sterling, in the different events before mentioned, the faid A hereby binds and obliges him, his heirs, executors, and fucceffors, fucceeding to him in any estate, real or personal, which may pertain to him, other than the effate of to content and pay to the faid B, in case she survive him, and there be children existing of the faid marriage at the diffolution thereof, the faid fum of 350l. Sterling, in so far as the rent of the free fourth part of the entailed estate of

, and the rent of the faid unentailed estate in which she is to be infest, shall fall short of that sum yearly; so that her liferent, in that case, shall be 350l. Sterling complete: And, in case there shall be no children existing of the said marriage at the dissolution thereof, or that the children existing shall thereafter decease without issue, to content and pay to her the said sum of 400l. Sterling, in so far as the said rents shall sall short thereof.

thereof, so that her liferent in that case shall be 400l. Sterling complete; AND which deficiency or shortcoming, in the respective events foresaid, the faid A BINDS and OBLIGES himself and his foresaids, to content and pay to the said B, her heirs and fuccessors, yearly, at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first term's payment at the first term of Whitsunday or Martinmas after his. death; and in case there shall happen to be children then existing, but who shall all thereafter. decease without iffue, then to content and pay the faid additional fum of 50l. Sterling yearly, at the faid two terms, commencing at the first Whitfunday or Martinmas after the decease of all the faid children and their iffue, and fo forth termly thereafter during her lifetime, with a fifth part more of penalty in case of failure—(then certain provisions were made for the claddren of the marriage)-And further, that the faid B may be the more effectually secured in her liferent of the faid entailed lands, and in payment of what deficiency the rents thereof, and the rents of the faid unentailed lands of may fall short of in paying the faid 350l. or 400k. Sterling of liferent in the different events above mentioneds the faid A BINDS and OBLIGES him and his forefaids, to make up and establish, in his person, proper titles, and thereupon to procure himself infest in the faid unentailed lands of

and then as now, and now as then, he hereby, with and under the burden of the faid B's life. rent, fells, alienates and dispones, from him, his heirs and successors whomsoever, to and in favour , or any two of them; and, failing one or more of them by death or non-acceptance, to the furvivor or furvivors, and the heirs or afsigness of the last survivor of them accepting, as trustees for the uses and purposes after mentioned. viz. FIRST, for the use and behoof of the said B. To far as concerns her further fecurity, and the performance of the faid obligation, to pay up to her the deficiency which the rents of the lands provided to her in liferent may come short of the agol. or sool, in the respective events above exprefied; and, in the second Place, for the ulb and behoof of the children, &c. &c. ALL and WRQLE, &c. (the unentailed estate.)

No. 2. of the above contracts, where the wife is provided in a jointure house, &c.; and therefore, it is unnecessary to repeat the clauses constituting that right; but sometimes it happens, that in place of a jointure house, the liferent of a house in town, or an annual sum, is given in place of it. Thus,

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House in town.—And further, the faid A hereby alienates and dispones to the said B in liferent, during all the days of her lifetime, in ease she survive him, ALL and whole that dwelling-house in Edinburgh—(describe it)—IN WHICH LODGING, the said A BINDS and OBLIGES him and his foresaids, to inseft and seife the said B in liferent, during all the days of her life after his death; to be held of his Majesty, in free burgage, for services of burgh, used and wont: And, for completing the said liferent insessment, the said A MAKES and CONSTITUTES

jointly and severally, to be his lawful and irrevocable procurators, for him, and in his name, to resign, as he hereby resigns, &c. All and whole, &c. in the hands of the Lord Provost, or any one of the bailies of the burgh of Edinburgh for the time, as in the hands of his Majesty, immediate lawful superior thereof; in favour and for new infestment thereof to be given to the said B during all the days of her life, in case she survives the said A, in due and competent form as effeirs; acts, instruments and documents, &c.; which liferent conveyance of the said lodging, the said A binds him and his foresaids to warrant to the said B, at all hands and against all deadly, as law will.

Or, in place of a house in town, and in place of a jointure house, the husband may give a sum

fum of money yearly, by a clause expressed in these terms:

And the faid A hereby BINDS and OBLIGES himfelf, his heirs, executors and fuccessors whomfoever, to make payment to the faid B, in case the furvive him, of the fum of vearly for house rent, and to supply the want of a jointure house; and that yearly and termly, at two terms in the year, Whitfunday and Martinmas, by equal portions, during her life, from and after the death of the faid B; beginning the first half yearly payment of the faid rent at the first term of Whitfunday or Martinmas which shall happen after the death of the said A, and so forth, half yearly thereafter, during the life of the faid B; of penalty for each with the fum of term's failure, and interest thereof, after the same falls due, till payment.

Provisions to Children.—These provisions may relate either to the heir, and contain conditions under which he is to enjoy the effate; or they may relate to the provision for the younger children. Examples of each shall be given.

D d 2

Clause

Clause in a Contract. in the Event of another

Estate devolving.

AND FURTHER, in case the lands of M and others shall happen to devolve upon the said A. then, and in that case, the said A and B BIND and oblige themselves, their heirs and successors. to provide and secure the faid lands and estate of M in fuch a manner, as that the same shall be kept separate and divided from the estate of N = and, with that view, they shall destine the same to the fecond fon of this marriage, and to the younger fons in their order, and the heirs of their bodies respectively; or, failing sons, to the daughters of the faid marriage, according to their feniority, and to the heirs of their bodies respectively: or, if there shall be daughters of this marriage only, and no fons, to the second daughter; and so to the others, according to their feniority, and the heirs of their bodies respectively; AND with this further condition, that if, in the course of succession, the estate of N shall devolve on the person possessing the said estate of M, the person to fucceeding to both estates shall enjoy them during his or her lifetime; but at his or her death, the faid estate of M shall descend to his or her fecond or younger fon, or to his or her daughters in their order, or the descendants of the bodies of fuch

Tuch children who shall be next in the line of fuccession to the said estate of N: and in case there shall be only one child, or one descendant of the body of fuch person, who, under the above destination. hall succeed to the said estate of N. the estate of M shall in that case descend to the next heir in the above destination; and the same rule shall take place as often as the said event of the junction of the two estates in the same person shall happen in the said course of succession; AND the heir so succeeding to the said estate of M shall be obliged constantly to assume and use the name and arms of B of M; and, in case of failure, shall ipso facto amit and lose all right, title and interest to the said lands and estate, and the same shall immediately fall and accresce to the next heir, although descended of the contravener's body, who would fucceed, if the contrawener were naturally dead; and fuch heir fo succeeding to the estate of M shall be subjected to fuch other conditions, limitations and irritancies, as the faid A or B, or the survivor of them, shall at any time appoint by a settlement of the faid lands, the same not being inconsistent with the conditions above expressed.

Clause empowering the Husband to give the Estate to any of the Children he pleases, or to tailsic the same.

As also, in contemplation of the faid marriage, the faid A BINDS and OBLIGES him and his foresaids, to provide and secure, and make lawful RESIGNATION of the lands and others foresaid, in favour and for new infeftments thereof, to be MADE and GRANTED to the faid A and the heirs male to be procreated of this marriage, and the heirs whatfoever of their bodies; whom FAILING. to the faid A his heirs or affignees whomfoever, the eldest daughter and the descendants of her body, as often as the fuccession shall devolve on females, excluding heirs portioners, and fucceeding without division through the whole course of fuccession; But with this PROVISION ALWAYS, as it is hereby provided and declared, that although the faid lands and others after mentioned are provided to the heir male of this marriage as aforesaid, yet it shall be lawful to the said A, at any time in liege poustie, to fettle and provide the faid lands and estate, or any part thereof, or to burden the fame with any fum or fums of money in favour of any of the children, one or more, to be procreated of this marriage, whether elder or younger, male or female, he shall think proper;

and to make such a fettlement and destination of his faid lands and estate on such series of heirs, and to affect the same with such conditions, limitations, clauses irritant and resolutive, as he shall think fit.—The procuratory in such a contract will contain a condition expressed in this manner-But with this provision always, as it is hereby specially PROVIDED and DECLARED, that although the faid lands and estate are provided to the heir male of this marriage, as aforesaid, yet still it shall be lawful to, and in the power of the faid A, at any time in liege poustie, to fettle and provide his faid lands and estate, or to burden the same with any fum or fums of money, in favour of any of the children to be procreated of the present marriage, whether male or female, he shall think proper, or of the descendants of their bodies; and to make fuch destination and tailzie of the said estate. and upon such series of heirs, and to affect the same with fuch conditions, limitations, claufes irritant and resolutive, and provisions, as he may think fit; ACTS, INSTRUMENTS, &c.

## Another Clause of the same kind,

The provisions of the lands to the heirs of the marriage may be made under this condition—But with this PROVISION ALWAYS, that it shall be in the power of the said A, at any time in his life, or D d 4 even

even on death-bed, by a regular deed, to prefer any of the younger fons of this marriage to the elder, or any of the daughters to the fons, or to their elder fifter, and to make substitutions of one of the fons to another, and of any of the daughters to the rest, and to impose on all or any of the heirs, whether male or female, such conditions and limitations against contracting debts, or dispoling or burdening the lands, and with regard to using and bearing the name and arms of A, as he shall think fit, and to enforce such conditions by clauses prohibitory, irritant, or resolutive; AND JURTHER, with power to him, even on deathbed, to fell and dispose of the said lands and estate, and to divide the price thereof amongst the children of the faid marriage, in such proportions and under fuch conditions, or to vest it in trustees for their behoof, in such way and manner as to the faid A shall seem best.

Clause relative to the Provisions for Younger Children.

Mr Russel, in his Theory of Conveyancing, observes that 'it is usual in Scotland to provide the whole land estate either of the husband or wife to the heirs of the marriage, and there is seldam any provision made for younger children.' This, however, was more the case formerly than now; and in the

the preceding examples will be found provisions to the normaer children, and additional provisions to the daughters of the marriage, when they are excluded from the succession by an heir male of a subsequent marriage. It may happen, however, that the exclusion hu the heir male of a subsequent marriage man arise from the death of the heir male of the first marriage, while he is yet in minority; and as the reason of the thing equally requires that the additional provision should be given to the daughters in that case, as in the one where the heir male of the first marriage-predeceased the father, Mr Russel gives a very proper and necessary caution to the conveyancer, with a view to show this danger; and he advises the pravision to be given, ' either in the e event that there shall be no heir male existing at the diffolution of the marriage; or, in case there shall be such heir male then existing, and that he shall die before marriage, or his attaining the years of majority, and that the daughters of the marriage shall be precluded from the ' fuccession to the estate by another heir entitled ' thereto by the above substitution; THEN, and in either of these cases, the said A BINDS and oblices him and his foresaids To-PAY, &c,-I shall only subjoin a clouse of this kind, taken from the styles of an eminent conveyancer.

#### Another Clause of this kind.

AND FURTHER, in case there shall no son exist of this present marriage, or, though existing, if fuch fon or fons shall all thereafter fail without iffue, and there be daughters one or more of this marriage in life, at the time of fuch failure, and there be also any other heir or presumptive heir who may be preferable to fuch daughters in the fuccession to the said estate of and in these events the said A hereby BINDS and OBLIGES him and his foresaids to content and pay to the faid daughters of this marriage who shall be in life at the time of fuch failure as aforefaid, the fums of money following; viz. If one daughter, the fum of 3000l. Sterling; if two daughters, the fum of 4000l. Sterling; and if three or more daughters, the fum of 6000l. Sterling, to be divided between or amongst the said two or more daughters, by fuch proportions as their faid father shall think fit, the same being always done without collusion; and, failing such division by him, to be divided equally amongst the said daughters, and to make payment of the faid respective sums to the faid daughters at the first term of Whitsunday or Martinmas after their marriage or majorities, which of them shall first happen, with a fifth part of the faid portions of liquidate expenses in case of failure, together also with the due and ordinary

dinary interest of their said portions during the not payment thereof, after the faid respective term of payment; DECLARING ALWAYS, that the faid portions shall not be payable to the faid daughters as long as their faid father is in life, unless they are married in his lifetime, and that their marriage be with his confent; and in case of his decease before his faid daughters, or any of them, attain to majority, or be married, he BINDS and OBLIGES him and his foresaids to pay to such daughter or daughters the due and ordinary interest of their respective portions from and after the first term of Whitfunday or Martinmas immediately preceding his death, and yearly and termly until the respective terms of payment of their portions above fpecified; and in the mean time, till commencement of the faid interest, the faid A BINDS and OBLIGES him to aliment, maintain and educate, the faid daughters as long as he lives, fuitably to their degree, station and quality: AND FURTHER, in case, at the death of the faid A, there shall be existing, issue male or female of this present marriage, or descendants of their bodies, on whom the succesfion of the faid lands and estate shall devolve, under the destination above written, and that there shall also exist other children, male or female, procreated of this present marriage, THEN and in these cases the said A hereby BINDS and OBLIGES him and his forefaids to PAY to these other children, besides the heir, the following sums; viz. If

one, the fum of 1500l. Sterling; if two or more such children, the sum of 3000l. Sterling, to be divided between or amongst them by their faid father, without collusion as aforefaid; AND FAILthe fuch division, to be divided equally amongst them, and to content and pay the faid fums to them at the first terms of Whitsunday or Martinmas after his death, with the due and ordinary interest from and after the said term of payment, during the not payment, with a fifth part more of each provision, of penalty in case of failure; BUT DECLARING, that on the failure of the fons of this marriage, and the existence of an heir, by whom the daughters of this marriage will be excluded from the succession of the said lands and estate, in which event the daughters of the said marriage will be entitled to recover the fums provided for them by the clause above written, it is hereby expressly conditioned, that the faid daughters shall in that event impute, in part of the provisions hereby provided to them, such sume as they may have received under the clause last above expressed, by which the said sums of 1 500l. and good, in the respective events foresaid, are to be divided amongst them in manner foresaid.

State of the Titles. Where, from the state of the titles, the parties cannot give those clauses

in the marriage contract which are necessary for completing the rights of the parties, or of the heir, the object may be attained in various ways, as by marriage articles, in which the conditions of the subsequent marriage contract are expressed, and which serve as the soundation of a future contract.

### Marriage Articles.

¿ It is contracted, agreed and matrimonia ALLY ENDED, betwirt the parties following, viz. A, younger of , with advice and confent , his father, and the of A elder of faid A elder, for himself, on the one part, and Miss B of , ON the OTHER PART: THAT is to say, the faid A, and the faid B, have accepted each other for lawful spouses, and oblige them to folemnize this marriage in the usual form, without delay; in contemplation of which marriage the faid parties contractors have agreed upon the following articles, and oblige themselves respectively to enter into a full and ample contract of marriage, containing procuratories of relignation, precepts of fasine, and all other clauses neceffary for making the laid articles effectual to one another: AND WHICH CONTRACT they BIND and oblige

430 CONT. PROCEEDING ON MARK. ARTICLES.

oblige themselves to ENTER INTO within the space of from this date; and which articles so agreed on, are as follows, viz. First, &c.

Contract of Marriage following on the foregoing
Articles.

It is contracted, agreed and ended, between the parties following, viz. A, Efq. of on the one part, and B, now wife of the faid A, with consent of her faid husband, on the other part, in manner following: THAT IS TO SAY, whereas previous to the marriage betwixt the faid parties, they entered into marriage articles, figned by them and the now deceafed A. elder of on the day of , by which they became bound to enter into a contract of marriage within the fpace of from that date; and whereas the faid parties are now defirous to implement the faid marriage articles, and are in a fituation to do fo with effect; THEREFORE, in CON-SIDERATION of the faid marriage, and of the faid articles, and IN IMPLEMENT thereof, the faid A hereby BINDS and OBLIGES him, &c .- (The contract is regulated by the terms of the articles.)

Or, in place of this manner of managing the transaction, the husband may give a procuratory for expeding his service, and completing his

his titles, in this form-

### Clause for completing Titles.

AND WHEREAS the fee of the faid lands and estate is not yet legally established in the person of the faid A, he therefore BINDS and OBLIGES himself, within the space of months from this date, to procure himself served and retoured heir to his predecessor in the said lands, and to obtain himself feudally vested in the same; AND, for that purpose, the said A MAKES and CONSTI-TUTES each of them, his irrevocable procurators, with power to them to procure brieves from Chancery for ferving and retouring him heir to his predecessors in the said lands, under the character proper and necessary for completing his right thereto, and with power to expede the fervice, and to take every step necessary for infesting him therein, and to do every other thing in relation to the premises which the said A himself could do; and the title to the faid lands being feudally vested in him, the said A hereby gives, grants, and COMMITS to his faid irrevocable procurators, jointly and severally, full power to refign and furrender, as he now, as if he were so infest, and then as now, RESIGNS, SURRENDERS, SIMPLICI-TER UPGIVES and DELIVERS, ALL and WHOLE, &c. And in the precept of fasine, fay-" FURTHER,

# 432 RENUNCIATION OF THE JUS MARITI.

to the end the said B may be duly insest and seised in the liferent annuity before mentioned, uplistable surth of the lands and others before specified, the said A, as if he were already seudally vested in the see thereof, and then as now, hereby desires and requires," &c.

The Entail may also be brought under the present head, as creating a change on the sorm of the Contract, arising from the state of the Titles: But, of this change, examples have been already given, as in Numbers 3. and 5.

# Renunciation of the Husband's Jus Mariti.

An example will be found (Ex. 4.) of the exclusion of the jus mariti; and I add another clause of that kind, which may be inserted after the provisions, by the wife, in favour of the husband.

# Clause renouncing the Husband's Jus Mariti.

BUT under this express condition and DECLA-RATION, that the faid A thall have no further concern with the rents and annual profits of the above.

above-mentioned lands and estate, or with any other heritable or moveable subject presently belonging, or that shall at any time hereafter belong, to the said B, in virtue of his jus mariti; and that the same shall neither be liable to his deeds, nor subject to the diligence of his creditors, for payment of debts which he may have already contracted, or may in future contract; AND NOTWITHSTANDING such debts, deeds, or diligence, it shall be in the power of the said B. by herfelf alone, without the confent of her hufband, to uplift and discharge the rents and casualties of the faid lands and estate, or others forefaid, or the interest of money to which she may now or hereafter have right, and to apply the fame to fuch purposes as she may think sit; and with power to the faid B to remove and input tenants, and to do every other thing in regard to the management of her faid estate, heritable and moveable, as if shewere still a single person: And to the effect the faid B may fully possess and enjoy these powers, the said A hereby RENOUNCES and MAKES OVER, in favour of the faid B, his jus mariti, and power of managing and administering. the faid estates, heritable and moveable, with all the powers and privileges to which, in virtue of his jus mariti, he is entitled.

Postmuptial

Posinuptial Contract of Marriage.—The form of the posinuptial contract does not materially differ from that of the antenuptial contract; and it is in the beginning of the deed that any difference is discoverable.

# Postnuptial Contract of Marriage.

It is MATRIMONIALLY CONTRACTED and AOREED ON, between A, ON THE ONE PART, and
B, with the consent of her said husband, on the
OTHER PART, in manner following; THAT IS TO
SAY, WHEREAS the said parties have lately solemnized their marriage; and although there was
no contract previously executed between them,
yet the following provisions and stipulations were
previously concerted and agreed on; THEREFORE,
in consideration of the said marriage, and of the
settlement by the said B, as after written, the said
A hereby binds and obliges him, his heirs, executors and successors, &c.—(The conditions of the
deed go on in common form.)

On this point it will not greatly infringe my arrangement, to subjoin the following postnuptial contract.

Postnuptial

Postnuptial Contract, containing a mutual Disposition, there being no Children of the Marriage.

It is matrimonially contracted, agreed and ENDED, betwixt A and B, spouses, on the ONE AND OTHER PARTS; That is to fay, the faid A and B, considering that there has been no contract of marriage entered into betwixt them. nor any provisions made by the said A to the said B, his spouse, in the event of her surviving him; and whereas there are no children procreated and existing betwixt them, they have resolved to become reciprocally bound to each other in manner under written; THEREFORE, the faid A and B, fpouses, do hereby, with one consent, give, grant, affign, dispone, and MAKE OVER, to and in favour of each other, in liferent, during all the days of their joint lives, and to the longest liver, and his or her heirs, executors and fuccessors whomsoever, in fee, all and fundry moveable goods and gear, corn, cattle, horse, nolt, sheep, insight and outfight plenishing, body clothes, with all and fundry debts and fums of money due and addebted to them, or either of them, by note, bond, bill, account, or otherwise, with gold or filver, coined or uncoined, which shall belong to them respectively at the diffolution of the marriage by the death of either party; surrogating and substiruting the longest liver of them two, and the foresaids of the longest liver, in the other's full right, title and place of the premises; and particularly, without prejudice to the generality foresaid, in and to the sum of contained in a bill granted by to them, dated and payable (here any particular debts may be enumerated)—with sull power to call for uplift and receive the whole debts and

cular debts may be enumerated)—with full power to call for, uplift and receive the whole debts and fums of money above assigned; and, if necessary, to call and pursue therefor, as accords; and generally every thing thereanent to do, which the said parties could have done before granting hereof; consentine to the registration hereof in the books of Council and Session, or other Judges' books competent, therein to remain for preservation, and that all execution competent may follow on a decree to be interponed hereto, in common form; and for that purpose constitute

our procurators, &c. In witness whereof, &c.

# SECT. II. DEEDS CONNECTED WITH THE CONTRACT OF MARRIAGE.

Ratification of a Contract of Marriage entered into in Minority.

I, A; considering that, upon when I was in minority, a contract of marriage was entered into betwirt me, on the one part, and B, now my fpouse, on the other part; and it being proper, now that I am arrived at the years of majority, that I should ratify the same; THERE-FORE, I do hereby RATIFY, CONFIRM and AP-PROVE thereof, in the whole heads, clauses, articles, obligations, provisions and conditions therein expressed; DECLARING, that the generality of this ratification shall nowife prejudge the same, but that it shall be equally valid, sufficient and effectual against me, my heirs and successors, to all intents and purposes, as if the said contract were verbatim engroffed herein; with which generality, and with all objections proponable against these prefents, and the contract of marriage above confirmed, I have dispensed, and hereby dispense for ever; AND I BIND and OBLIGE myself, my heirs and fuccessors, to WARRANT this ratification to be good, valid and fufficient, to the faid B my spouse, E e 3

fpouse, and to all concerned, at all hands, and against all deadly, as law will; and I consent that execution shall pass on the said contract, and on this ratification thereof, at the instance of and , or the survivor of them, and, failing of them by death, at the instance of their heirs, against me, for implement of the foresaid contract, and this ratification thereof in favour of the said B, and the heirs or children procreated, or to be procreated betwixt. us. And I consent to the registration, &c.

# Instrument of Sasine on a Contract of Marriage in favour of the Husband.

IN THE NAME OF GOD, AMEN. BE IT KNOWN TO ALL MEN, by this present public instrument, that upon, &c. IN PRESENCE of me, notary public, and of the witnesses subscribing, APPEARED personally M, as procurator for, and in name of A, eldest lawful son of A senior, whose power of procuratory was sufficiently known to me the said notary public, and passed with us, and N, baillie in that part specially constituted, by virtue of the precept of sasine after specified, to the ground of the lands and others after specified respectively, HAVING and HOLDING in his hands a contract of marriage, of the date underwritten, and containing therein the precept of sasine after inserted,

inserted, entered into betwist the said A junior, with consent of A senior, his father; and the said A for himself, on the one part, and B, eldest lawful daughter of the deceased, now spoule to the said A, on the other part, dated

, whereby the faid A fenior, in contemplation of the marriage betwixt the faid A junior and the said B, and in consideration of the provisions on the part of the said B, GAVE, GRANT-ED and DISPONED, to and in favour of the faid A iunior, and the heirs male of the faid marriage; WHOM FAILING, to the other substitutes therein mentioned, heritably and irredeemably, ALL and WHOLE—(here the lands are described)—with and under the burden always of the liferent annuity to the faid B, in case she should surof vive the faid A junior her husband, in manner specified in the said contract of marriage; WHICH LANDS, the faid A fenior BOUND and OB-LIGED him, and his foresaids, to infeft and seife the faid A junior and his foresaids, by two infeftments and manners of holding, a se vel de se, as the faid contract, containing procuratory of refignation, and the precept of sasine above mentioned and after inferted, with other usual clauses, in itself more fully bears; WHICH CONTRACT of MARRIAGE, containing the faid precept of fafine, the faid attorney presented to the faid baillie, &c.; GAVE and DELIVERED to the said A heritable state and fasine, real, actual and corporal possession, of E e 4 all

all and whole the lands and others forefaid, with and under the burden always of the faid liferent annuity of to the faid B, in case she shall survive her said husband; and that by delivery, &c. (in common form.)

# Instrument of Sasine in favour of the Wife.

In this form, it will be fufficient to state the manner of narrating the contract of marriage, and the delivery of sasme to the wife in the jointure and mansion-house.

HAVING and HOLDING in his hands a contract of marriage (containing therein the precept of fafine after inferted), entered into betwixt the faid A on the one part, and the faid B on the other , WHEREBY the faid A, in part, of date contemplation of his marriage, thereby contracted, and thereafter folemnized with the faid B, BOUND and OBLIGED him, and his heirs and fuccessors whomsoever, on their own expenses, duly and lawfully to infeft and seife the said B in liferent, during all the days of her lifetime, after the death of the faid A, in case she should happen to survive him, in ALL and WHOLE—(here the liferent lands and manor place were described)—and that by two infeftments and manners of holding,

a se vel de se, in manner more particularly therein mentioned.—(The act of giving sasine was thus
expressed)—GAVE and DELIVERED liferent state
and sasine, actual, real and corporal possession of
all and sundry the lands, manor place, and others
foresaid, to the said B in liferent, during all the
days of her lifetime, after the death of the said
A; and that by delivery, &c.

Another Example of the Sasine in favour of the Wife given by the Husband, propris manibus.

In presence of A of and of me. notary-public, and witneffes subscribing, com-PEARED, on the ground of the lands and others after described, respectively and successively, M, fervant to the faid A, as procurator and attorney for B, spouse of the said A, whose power of attorney was sufficiently known to me the said notarypublic; HAVING and HOLDING in his hands a contract of marriage, dated entered into between the faid A and B, on the one and other parts; whereby, in contemplation of their marriage, which has been fince folemnized, the faid A BOUND and OBLIGED him, his heirs and succesfors, to infeft and seise the faid B in liferent, du-. ring all the days of her lifetime, in case she should furvive him, in all and whole a liferent annuity of 2001. Sterling yearly, to be uplifted and

and taken, free of all public burdens whatever, at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first term's payment at the first Whitsunday or Martinmas after the death of the faid A for the half year enfuing, and so termly thereafter during the life of the faid B, FURTH of ALL and WHOLE, &c. OR furth of any part or portion of the faid lands and others, readiest rents and duties thereof, To BE HELD in manner mentioned in the faid contract, by which it is provided and declared, that in case there be children of the marriage, and the faid B shall, after the death of the faid A. enter into a fecond marriage, then and in that case, the said liferent annuity of 2001, shall be restricted, and it is hereby restricted to the sum of 100l. during the lifetime of the children, or the descendants of their bodies; but on their death, she is to recur to the full annuity of 200l., as the faid contract, procuratory of refignation, precept of fasine, and other clauses, in itself more fully bears; which contract of marriage, the faid attorney presented to the faid A, requiring him, in implement thereof, to give and deliver, ex propriis suis manibus, liferent state and sasine to the faid B, of the foresaid annuity, payable at the terms, in the proportions, and furth of the lands and others as therein expressed; which DE-SIRE the faid A knowing to be just and reasonable, he received the faid contract into his hands,

and delivered the fame to me, notary public fubscribing, to be read and published to the witnesses present, which accordingly I did; AFTER READING and PUBLISHING of which contract of marriage, the faid A, in implement thereof, GAVE and DELIVERED ex propriis suis manibus, liferent infeftment, state and sasine, to the said B, of all and whole the faid annuity of 2001. Sterling, free of all burdens whatever, yearly, to be uplifted and taken at two terms in the year, Whitfunday and Martinmas, by equal portions, during all the days of her lifetime, from and after the death of the faid A; beginning the first term's payment at the first Whitsunday or Martinmas after the death of the faid A, for the half year ensuing, and so forth half yearly thereafter during the life of the faid B, but with and under the condition and declaration before expressed, FURTH of ALL and WHOLE, &c. OR FURTH of any part or portion thereof, readiest rents and duties of the fame, to be held as aforesaid; and that by delivery to the faid attorney, of earth and stone of the ground of the faid lands, and a penny money for the faid annuity, and all other usual and neceffary fymbols; whereupon, and upon all and SUNDRY the premisses, the said procurator asked and took instruments in the hands of me the said notary public. These things were fo done, &c. In presence, &c. witnesses to the premisses specially called and required: AND ALSO, in token of

the verity of ALL and SUNDRY the premises, the faid A has subscribed these presents, at the day of , before these witnesses and

# Bond taken for Money laid out to answer the purposes uf a Marriage Contract.

WE, M, N, and O, grant us instantly to have borrowed and received from A, the sum of 1000l. Sterling, being the sum which the deceased B advanced and paid to the said A on his entering into the marriage contract, dated

, with the now deceafed B, daughter of the faid B; WHICH SUM of 1000l. Sterling, we, the faid M, N, and O, BIND and OBLICE us. jointly and feverally, our heirs, executors, and fucceffors whatfoever, renouncing the benefit of discussing our said heirs in order or priority, to content and repay to the faid A in liferent, and to C the only child now in life procreated betwixt him and the faid deceafed B in fee: whom failing, to the faid A, his heirs and affignees whomfoever, at the term of Martinmas next with a fifth part more than the faid principal sum of liquidated expenses, in case of failure, together with the due and legal interest of the faid principal fum, from the date hereof to the forefaid term of payment, and thereafter yearly, termly, and proportionally,

proportionally, during the not payment thereof: WITH THIS PROVISION, that it shall be in the power of the said A, by himself alone (though only liferenter), and without consent of the faid C. to uplift, receive and discharge, and to do diligence for recovering, or to affign and convey in his own name alone, the faid principal fum, in the fame manner, and as fully as if he had been fiar thereof, he always being bound to reemploy and apply the same in terms of the said contract of marriage, but with which reemploying or application we are to be nowife concerned, nor in any way answerable, further than for once and single payment to the faid A, or to his affignees, in case he thall choose to lift or assign the said principal fum; consunting to the registration hereof in the books of Council and Session, and other Judges' books competent, that letters of horning on fix days' charge, and all other execution competent may follow, on a decree to be pronounced hereon in form, as effeirs; and, for that purpose, we CONSTITUTE

our procurators, &c. In with 222 whereof, &c.

Assignation to a Husband and Wife, in implement of a Marriage Contract.

I, M, in consideration of a fum of money equivalent to the fums of money hereby affigned, paid

paid to me by A, for himself and in name of B his wife, Do, by these presents, Assign and Dispone to and in favour of the said A, and B his wife, and longest liver of them two, in conjunct see and liferent, for her liferent use allenarly, and to the heirs to be procreated betwixt them in see; which failing, to the said A's nearest heirs and assignees whatsoever, the principal sum of 500l. Sterling, and interest thereof from the term of Whitsunday last to the date hereof, and in time coming during the not payment, with the sum of 100l. Sterling of liquidated expenses, contained in a bond granted by L to me, bearing date

, with the faid bond itself, whole import, force and effect thereof, and all that has followed or may follow thereupon; surrogating and substituting, by these presents, the said A and B, and their foresaids, for their respective rights of liferent and fee, in my full right and place of the premises for ever; with power to them to ask, crave, receive, intromit with, and uplift the fums of money before assigned, and to dispose thereupon at their pleasure, and, if need be, to charge and pursue therefor, decrees thereupon to recover, and to cause put the same to due and lawful execution; compound, transact, and agree thereanent, and to grant receipts and discharges thereof, which shall be valid to the receiver; and generally, to do every thing necessary in the premiles which I might have done before granting hereof:

hereof: which assignation I bind and oblige me, my heirs and executors, to WARRANT from all facts and deeds done or to be done by me, prejudicial hereto; DECLARING ALWAYS, that the lifetent right of the faid principal fum hereby provided to the faid B, shall be imputed pro tanto of the provisions conceived in her favour by the contract of marriage betwixt her and the faid A, which are therefore fo far implemented; BUT DECLARING ALSO, that the faid A shall have full power and liberty to ask, crave, receive and discharge, the forefaid principal fum, and interest thereof, and liquidated expenses foresaid from the said L, or to convey the fame; which discharges or conveyances by the faid A alone, shall be valid to the receivers, and that without the confent or concurrence of the said B, or their children, had or obtained thereto; THE faid A being ALWAYS BOUND and OBLIGED, in that event, to reemploy the faid fums of money in the way and manner hereby provided, by taking the vouchers and fecurities thereof in favour of himself and the said B his wife in conjunct fee and liferent, for her liferent use allenarly, and to the heirs to be procreated betwixt them in fee; AND I have herewith DELIVERED up to the faid A the faid principal bond, to be kept and used by him and his forefaids, as their own evidents, in all time coming; AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other judges' books

books competent, therein to remain for preservation, and that all execution competent may follow hereon in forms as effeirs; and thereto con-STITUTE

, my procurators, &c. In wit-

SECT. III.—THE FORM OF DISSOLUTION OF THE MARRIAGE DURING THE LIVES OF THE PARTIES.

I shall close this subject with the forms by which the matrimonial connexion is broken during the lives of the parties, by the sentence of a competent court, or by the private agreement of the parties.

It is before the Commissaries that a cause of this nature must be brought in the first instance; and, without adverting to the different grounds on which such actions are competent, I shall give an example of a summons of divorce before the Commissaries of Edinburgh, on the head of adultery.

### Summons of Divorce on the head of Adultery.

and —, Esqs. advocates, commisfaries of Edinburgh, &c. shown to us by B, spouse of A, with concourse of procurator fiscal of court, for his interest, THAT WHERE in the month of , or thereby, the complainer was married to the said A, with whom she afterwards cohabited; AND ALTHOUGH by the law of God, as well as by the mutual vows and faith plighted to each other on their entering into their foresaid marriage, they were reciprocally bound to a strict adherence to each other, yet TRUE IT IS AND OF VERITY, that the faid A, casting off the fear of God, and difregarding his matrimonial vows and engagements, whereby he flood bound to have preserved the marriage bed inviolated, has for a confiderable time past, at least from the month of , totally alienated his affections from the complainer, and given himself up, at different times and places, to adulterous practices, fellowships, and correspondence with other women, and had carnal adulterous conversation, intercourse, and dealing with fuch women, AND MORE PARTICULARLY—(It is here that the particular acts of adultery are stated; and as much will depend on the accuracy and relevancy of the facts condescended on, great care ought to be taken, not only in regard to the facts which VOL. V. ought.

ought to be stated, but in the manner of stating them : this part of the summons ought therefore to be well and ripely advised)—From all which it is evident, the defender has been guilty of the crime of adultery; AND THEREFORE the faid B ought to have our fentence and decree, FINDING and DECLAR-ING that the faid defender has been guilty of the crime of adultery; and divorcing and feparating him from the complainer; and discharging him from her fociety, fellowship, and company, in all time coming; AND FINDING, DECLARING and DECERNING the faid A to have forfeited all the rights and privileges of a lawful husband; AND FINDING, DECERNING and DECLARING that the faid complainer is entitled to marry any free man, as if she never had been married to the said A, or as if he the faid A were naturally dead: THERE-FORE we charge you, that ye, in his Majesty's name and authority and ours, lawfully fummon, wara, and charge the faid A defender, personally or at his dwelling place, upon fifteen days warning for the first diet, and six days thereafter for the second diet, if within Scotland; and, if furth thereof, by open proclamation at the market cross of Edinburgh, pier and shore of Leith, upon fixty days warning for the first, and fifteen days thereafter for the fecond diet, to compear before us on the , and . for first

and fecond diets, in the hour of cause, to answer at the instance of the said B complainer; THAT

is to say, to hear and see the premises verified and proved, and, being so done, to hear and see sentence and decree given and pronounced by us, finding, declaring and decerning, in manner and to the effect above written, or else to allege a reasonable cause in the contrary; with certification, &c. According to justice. Given under our seal of office, and signed by our clerk of Court, this day of years.

After the defender is cited to appear, and the days of compearance elapsed, the pursuer must appear in Court and give her oath of calumny; which runs in these terms.

COMPEARED B, who being folemnly fworm and examined de calumnia, DEPONES, That there is no collusion betwixt her and the faid A her spouse, as to carrying on the process of divorce at heir instance against him; and defended and cause to believe that her faid husband has committed adultery; as charged in the libel against him, which she has just now heard read over to her. And this is TRUTH; &c.

The cause then goes on; and the facts being relevantly condescended on, and a list of F f 2 witnesses

witnesses given into process, the proof is allowed to proceed; and on the import of the proof, the decision of the Court will depend.

The ultimate decision of the Court in the cause, and even every interlocutory order and finding of the Commissaries, in regard to the facts admitted to proof, or the evidence by which they are to be established, may be made the ground of complaint to the Court of Session by bill of advocation; and from that Court the question may be removed to the House of Peers by appeal.

It frequently happens, therefore, that actions of divorce are rendered very tedious and highly expensive to the parties, by applications to the Courts of Review. When the complaining party prevails, the decree of the Commissary Court dissolves the marriage; and the expense of the whole proceedings is defrayed from the funds of the husband.

In place of reforting to a court of law, a private transaction betwixt the parties, by which they agree to live separately, is preferred, or the same remedy is applied when perhaps there are no grounds for a divorce, though the disagreement of the parties may render such a measure adviseable. The object may be accomplish-

ed, either by a deed, or, more securely, by a submission and decree-arbitral. The terms of the submission will be easily framed from the circumstances of the case, and the Forms of Submissions, which will be found in the next volume. The decree-arbitral, again, will rest in the mind of the Judge; or, what of form belongs to it, will be found under the same head with that of Submission. Where the matter is managed by a private deed, it may be done in the following form:

Deed of Separation betwixt Husband and Wife.

IT IS CONTRACTED and voluntarily ENDED, between A, on the ONE PART, and B, his wife, on the other part, in manner following: That is TO SAY, the faid parties having, for sufficient reafons, resolved to live separately in future, they have therefore agreed on the following terms of feparation: On the part of the faid A, he hereby BINDs and OBLIGES himself to make payment to the faid B, yearly and termly, for her separate aliment and maintenance, of an annuity of 100l. Sterling, at two terms in the year, Whitsunday and Martinmas, by equal portions, during their joint lives, and the continuance of the present separation; beginning the first term's payment at the term of Whitfunday next, for the subsequent half year, the faid A having, at the date hereof, Ff3 paid

paid up a fum equivalent to her aliment and maintenance till that term, and fo forth half yearly thereafter, during the joint lives of the faid A and B, and their separation as said is, with rol. Sterling of liquidate penalty for each term's failure in payment of the faid annuity, termly, as it falls due, with the interest of each term's payment from the term of payment thereof, during the not payment; AND the faid A hereby BINDs himself, and, further, on the faith and honour of a gentleman, folemnly promifes, never to revoke, suspend. or delay payment of the faid annuity to his faid fpouse, on any pretence whatever, and that her own simple receipts shall be sufficient discharges thereof, and he shall require no other; AND WHICH ANNUITY, as it is purely alimentary, shall not be affectable by the creditors of the said B, nor asfignable by her; AND ON THE OTHER PART, the faid B hereby obliges herfelf to withdraw herfelf from the family of the faid A, and to continue feparate therefrom during their lives. FURTHER, the hereby accepts of the faid fum of 100l. fettled on her in manner foresaid, in full of all claim for feparate aliment, board, clothes, or other necesfaries and expenses of all kinds, which the can demand by law from the faid A as his wife, during their separation; and she BINDs and OBLIGES herself not to contract or take on debts, on any account or pretence whatever, which can in any shape affect the said A, and his means or estate,

and become the foundation of any legal demand upon him: AND it is hereby DECLARED, that all execution necessary for enforcing the obligations come under by the faid A shall pass against him at the instance of M, for behoof of the said B; AND LASTLY, each of the faid parties pass from and RENOUNCE any action of adherence or of aliment competent by law, at the instance of either of them against the other, and whole effect thereof; and in case any such process shall be raised or intented, these presents shall afford an effectual defence for dismissing the same; AND they consent to the registration hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on fix days' charge, and all other execution competent, may follow on a decree to be interponed hereto, in form as effeirs; and for that purpose they con-STITUTE

THEIR PROCURATORS, &c. In witness whereof, &c.

Sometimes the wife finds caution not to contract debt that may affect her husband; by which means the necessity of inhibiting the wife is avoided. The clause may be thus expressed, and will come in, in place of the obligation on the wife not to contract debt in the preceding contract.

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4 AND FURTHER, M, as taking burden on him for the faid B, BINDS and OBLIGES himself, his heirs, executors and successors, that she shall not, during the said separation, contract or take on debts or sums of money upon any pretence whatever, which may anyways affect or burden the said A and his estate, or become the soundation of any legal demand against him; from all which the said M hereby obliges himself and his foresaids to relieve the said A, as well as from all damage and expense he may thereby incur.

At other times, in addition to the obligation on the wife not to contract debt that may affect the hufband, there is added a confent that the husband may raise inhibition against ' And the faid B Also consents, ' that her husband shall raise, execute and record letters of inhibition against her, if he fhall think fit.' This is subjoined to the obligation on the wife, though certainly very unnecessarily, unless with a view to point out more expressly to the wife the confequences which would enfue, should she venture to infringe the obligation. To close this fubject, I subjoin the form of the letters of inhibition, which are often made to contain improper reflections on the wife; a thing

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of which the Court would highly difapprove.

### Letters of Inhibition against a Wife.

GEORGE, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith: To

, messengers at arms, our fheriffs in that part specially constituted, greeting: WHEREAS it is humbly meant and shown to us, by OUR LOVITE A, that having, for some time, been married to B, he has reason to apprehend that fhe will contract unnecessary debts, to his great hurt and prejudice, unless a remedy be provided therefore. Our will is herefore, and we charge you, that, on fight hereof, ye pass, and in our name and authority, inhibit and discharge the faid B, perfonally, or at her dwellingplace, that fhe in noways fell, annalzie, give in pledge or gift, dispose of, dilapidate, nor put away, any of the goods, fums of money, household furniture or others, pertaining and belonging to her or to the complainer, or to her and him in common betwixt them as husband and wife, nor contract nor take on debts with any person or persons whatever, by bond, bill, accounts, promife of payment or otherwise, to the hurt and prejudice of her faid husband, or whereby his person, estate, or effects, may be anyways attached, affected, or evicted;

evicted; AND ALSO, that ye, in our name and authority, INHIBIT and discharge all and sundry our lieges and others whom it effeirs, by open proclamation, at the market cross of and other places needful, that they, nor none of them, prefume or take upon hand, under any colour or pretence whatever, directly or indirectly, to buy, take, or receive in pledge, gift or otherwife, from the faid B, any goods, gear, household furniture or others, pertaining and belonging to her, or to the faid A her husband, or in common. betwixt them, nor give or advance to her any from of money, goods, or other furnishings whatever, on bond, bill, account, pledge, credit, or otherwise, in time coming, without the special license, authority, and consent of her said husband; CERTIFYING those that do in the contrary. that all such purchases, gifts or pledges, and all bonds, bills, accounts, or other vouchers of debts to be made or granted by her, with all competent to follow thereon, shall be void and null, and of no force, strength for effect, with all that has or may follow thereon in judgment, or outwith the same; and that the complainer shall have good right, action and title, to reclaim and take back all goods and effects which shall be fold, gifted, or disposed of by his said spouse; and that he shall noways be bound to pay any sum of money, or the price of any goods or furnishings which

which shall be lent or furnished to her in time coming; and that ye cause register these our letters and executions to follow hereupon, within forty days, conform to act of Parliament. According to justice, as ye will answer to us thereupon; which to do, we commit to you, jointly and severally, full power, by these our letters, delivering them by you, duly executed and indorsed, again to the bearer.—Given under our signet, at Edinburgh, the day of and the 43d year of our reign, 1803.

Ex Deliberatione dominorum congilii, &c.

Signed by a Writer to the Signet.

These letters pass on a bill which requires no warrant, and is granted of course,

I proceed next to treat of Relative Deeds; as, Bonds of Provision to Wives and Children.

### CHAP. II.

OF DEEDS RELATIVE TO THE MARRIAGE CONTRACT; AS BONDS OF PROVISION, &cc.

I SHALL not detain the reader long on the head of Bonds of Provision. I shall give a few examples of those deeds which become necessary for carrying the marriage contract into effect, or to supply what may have been omitted, or may have become necessary from the changes in the situation of the parties, with the discharges of the provisions in whatever way constituted.

#### SECT. I. PROVISIONS TO WIVES.

Heritable Bond of Annuity to a Wife, in addition to former Provisions.

I, A, CONSIDERING that by the antenuptial contract entered into betwixt B and me, certain provisions

provisions are thereby made to the said B; in the event of her furviving me; AND FURTHER, CON-SIDERING that, from the amount of my fortune, it is just and reasonable, that the provisions made for the said B, in case she shall survive me, be increased; THEREFORE, in addition to the provifions thereby stipulated, I hereby BIND and OB-LIGE me, my heirs and successors whomsoever, to pay to the faid B, a free annuity of 2001. Sterling, during all the days of her life, after my death, in case of her surviving me; and that at two terms in the year, Whitfunday and Martinmas, by equal portions; beginning the first term's payment thereof at the first term of Whitsunday or Martinmas next and immediately following: my death, for the half year preceding, and for forth, termly and proportionally thereafter, during the natural life of the faid B, with a fifth part of each term's payment of liquidate penalty in case of failure, and the legal interest of the faid termly payments during the not payment thereof: AND for the faid B her further fecurity and more fure payment of the foresaid annuity, I bind and oblige me and my foresaids, to infeft and seise the said B, in the said free liferent annuity of 2001. Sterling, payable at the terms, in the proportions, and under the penalty, and with interest in manner foresaid, FURTH of ALL and WHOLE—(here describe the lands)—or furth of any part or portion thereof, readiest rents

and duties of the same, and that by two several infeftments and manners of holding. To BE HELD either of and under me and my foresaids, or from us of our immediate lawful superiors of the forefaid lands, both in free blench, for payment of a penny Scots, on the grounds of the faid lands at Whitfunday, yearly, if asked only; AND for COM-PLETING the faid infeftment by RESIGNATION, I BIND and OBLIGE me and my foresaids to execute all necessary deeds, containing procuratories of refignation, with every other clause requisite; WHICH additional liferent ANNUITY, I OBLIGE me and my foresaids, to WARRANT to the said B to be free, safe and sure, at all hands and against all deadly, as law will; AND I hereby As-SIGN and MAKE OVER the first and readiest of the rents and duties of the faid lands, to and in favour of the said B in liferent, during all the days of her life, from and after my death, to the extent of the faid free annuity of 2001. Sterling, upliftable forth thereof; AND I DISPENSE with the DELIVERY hereof, and declare, that this bond of annuity shall have full effect, though found in my own custody, or in the custody of any third party, undelivered at my death, any law or practice to the contrary notwithstanding; AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other judges' books competent, therein to remain for preservation, and that all execution competent may follow

low on a decree to be interponed hereto in common form; AND for that purpose CONSTITUTE

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PROCURATORS, &c. AND to the effect the faid B may be infeft in the faid free liferent annuity to be held in manner foresaid, I hereby DESIRE and REQUIRE YOU

and each of you, jointly and severally, my bailies in that part, to the effect after specified, hereby specially constituted, that, on fight hereof, ye pass to the ground of the said lands, AND there give and Deliver Liferent STATE and SASINE, with actual, real, and corporal possession to the said B, of the said free liferent annuity of acol. Sterling, to be uplifted and taken at the terms, in the proportions, under the penalties, and with interest thereon, all in manner above expressed, FURTH of ALL and WHOLE the lands and others foresaid, and furth of any part or portion thereof, readiest rents and duties thereof; AND THAT by delivering to her, or to her attorney in her name, bearer hereof, of earth and stone of the ground of the said land, with a penny money for the faid annuity, and other fymbols usual and necessary; and this in noways ye leave undone; which to do, I commit to you my full power, by this my precept of fafine, directed to you for that effect. In witness whereof, &c.

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Personal Bond of Annuity to a Wife in addition to the Provision of a Marriage Contract.

I, A, considering that, by a contract of marriage entered into betwixt me and B my wife, I made certain provisions in her favour, in particular—(here narrate the provisions)—AND CONSI-DERING that the faid provisions are not adequate to what my wife is in every view justly entitled to; THEREFORE, and without prejudice to the foresaid contract of marriage, and provisions therein contained, but in addition thereto, and from the love and affection I bear my faid wife, I hereby BIND and OBLIGE me, my heirs, and successors, to pay to the faid B, a farther annuity of 100l. Sterling, during all the days of her life, from and after my death; and that at two terms in the year, Whitfunday and Martinmas, by equal portions; beginning the first term's payment thereof at the first Whitsunday or Martinmas after my death, and so forth termly thereafter during her life, with a fifth part more of each term's payment, of liquidated penalty, in case of failure in the punctual payment thereof, and the legal interest of the said annuity, from and after the respective terms of payment thereof, until payment; WHICH LIFERENT ANNUITY of 100l. is hereby declared to be over and above the faid provisions contained

contained in the foresaid contract of marriage, which are to continue in full force in all points, and which these presents are in no shape to affect; and which additional liferent annuity of 100l. Sterling, with the feveral provisions contained in the faid contract in favour of the faid B. are to be in full fatisfaction to her of all liferent provisions, terce of lands, half or third of moveables, and every thing which she, or her heirs or executors, can anyways claim from me, my heirs, executors or fucceffors, in and through my death, or by her predeceasing me; AND I DIS-PENSE with the DELIVERY hereof, and declare. that this deed shall have the full force and effect of a delivered deed, though found in my repositories, or in the custody of any person, undelivered, at my death; AND I CONSENT to the REGISTRATION hereof, &c.—(as in the preceding example.)

### SECT. II. PROVISIONS TO CHILDREN.

Deed dividing the general Sum provided to Children in a Contract of Marriage.

I, A, considering, that by contract of martiage entered into between B and me, of date the fum of 4000l. Sterling is thereby provided in general to the children of our vol. v. # G g marriage,

marriage, other than the heir, in the lands thereby conveyed; AND THAT I am thereby entitled to divide the faid general provision amongst the faid children, as I shall think fit; AND being defirous of exercifing the powers thereby referved to me, I Do hereby DECLARE the interest of the faid children in the faid general provision to be regulated and ascertained by the terms of the obligation to pay the same, herein after contained; ACCORD-INGLY, in IMPLEMENT, and in CORROBORATION of the faid general provision contained in my faid contract of marriage, but without addition thereto in any shape, and folely with a view to divide and proportion the same amongst my children, I do hereby BIND and OBLIGE me, my heirs, executors and fuccessors, to pay to my said children, the faid general provision of 4000l. Sterling, and that in the proportions following, viz.—(here will be inserted the names of the children, and the proportion of the general provision to be given to each)—AND THAT at and against the term of Whitfunday or Martinmas, &c.—(this part will be regulated by the terms of the contract)—with a fifth part more of each of the faid several sums of hiquidated penalty in case of failure, and the legal interest of each of the said sums, from the said terms of payment, and yearly, termly, and continually thereafter, during the not payment thereof; DECLARING ALWAYS, that these provisions are given under the conditions and declarations contained

tained in the faid contract; AND FURTHER, in cale say of the faid children shall happen to die before the faid term of payment, and before they shall have drawn their several portions provided to them in manner above mentioned; or if one or more of them, by the failure of the perfons named to succeed to the said estate, shall have acquired right to the faid estate before the term of payment of the faid provisions, or before he or they shall have drawn their respective portions hereby provided to him or them; that, in either or both of these cases, the portion or portions of the child or children to deceating or fucceeding to the faid estates, shall descend and belong to the survivors or other children foresaid, proportionally, and pro rate, to the mares hereby alcertained; RESIDVING full power and liberty to me, at any time in my life, by a writ under my hand, to alter the proportion and extent of the individual provisions hereby made and executed in favour of my faid children, at any time before their respective marriages of majorities, and to increase and diminish respectively, the above shares, as I shall think fit; AND I DISPENSE with the DELIVERY hereof, &c. -(as in the preceding example, with a similar clause of registration.)

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Bond of Provision to Younger Children, in implement of a Marriage Contract, and enlarging: their Provisions.

I, A, considering that by contract of marriage, entered into betwirt B and me, dated . I became bound to make payment to the daughter or daughters of the marriage, in case there should be no heirs-male, or to the younger fons and daughters of that marriage, in case of an heir-male, of the sum of 5000l. Sterling, at the first term of Whitsunday or Martinmas next after their attaining the age of 21 years. complete, or after my death, whichever of them should first happen, with the legal interest afterthe term at which the same shall become due. during the not payment thereof, and a fifth part more of liquidate penalty in case of failure; declaring, that in case of more daughters or younger children than one, it should be in my power to divide the faid fum amongst the faid daughters or younger children, at my differetion, by a writing under my hand; WHICH PATRIMONIES are thereby declared to be in full fatisfaction to them of all legitim, portion natural, or executry, which they or either of them can claim or demand by the law of Scotland, through my death, or the death of the faid B, their mother, excepting what I may think proper further to bestow upon them.

of my own good will, as the faid contract of marriage more fully bears: AND WHEREAS there are already three daughters existing of the said marriage, C, D, and E; AND being defirous of providing for them and for the children that may hereafter be procreated of the faid marriage. other than the heir male fucceeding to the estate in terms of the destination contained in the said contract, and that in a manner more adequate to my fortune and station in life than has been done by the faid contract: THEREFORE, under the conditions herein after expressed, and including therein the aforefaid general provision of 5000l. stipulated in the faid contract, I BIND and OBLIGE me, my heirs, executors and fuccessors, to pay the following provisions, viz. to the faid C, D, and E, my daughters, already procreated of the faid marriage, the fum of 10,000l. Sterling, equally amongst them; or, in case of the existence of any more daughters or children, other than the heir of the faid estate, under the destination in the faid contract, then, in place of the faid 10,000l., I OBLIGE me and my foresaids to pay to my whole children, equally amongst them, the fum of 15,000l. Sterling, and that at and against the term of Whitsunday or Martinmas next and immediately following their attaining the age of 21 years complete, or my death, whichever of these events shall first happen, with a fifth part more of liquidate penalty in case of failure, and Gg3

the legal interest of the said principal sum of 10,000l. Sterling, or 15,000l., in the events forefaid, from the faid terms of Whitfunday or Martinmas, as long as the same shall remain unpaid: and which sums of 10,000l. or 15,000l. Sterling, as above stipulated, shall be accepted of by the faid C, D, and E, my daughters, already procreated and existing, and by the younger children vet to be procreated of the faid marriage, in full satisfaction of all portion natural, bairns' part of gear, executry, legitim, or whatever else they can claim or have right to by the foresaid contract of marriage, or through my death, or the death of their faid mother, in any manner of way, excepting good will only; DECLARING, that in the event of the death of any of my faid daughters, already procreated, or other daughters or younger children to be procreated of this marriage, the fhare and proportion falling to fuch daughter or child, shall belong to the heir succeeding me in the faid lands and estate; RESERVING ALWAYS to myself power to divide the said provisions amongst my said children, in such other proportions as I shall think fit to express, by a writing under my own hand, notwithstanding the above destination to them equally; AND RESERVING ALSO, FULL POWER to me, at any time of my life, to REVOKE, ALTER OF INNOVATE these presents; but in so far only as relates to the additional provision of 10,000l. Sterling, hereby given to my faid children; AND I DISPENSE with the want of DELIVERY, and declare these presents to be valid and effectual, though lying in my custody undelivered, or though found in the hands of any third party after my death; AND I CONSENT, &c.—(clause of registration as before.

# Heritable Bond of Provision by a Father to his Younger Children.

I, A, for the love and affection I bear to my younger children after named, do rereby BIND and OBLIGE me, my heirs, executors, and fucceffors whomfoever, to content and pay to my faid children the respective provisions underwritten, viz. to B my second son, the sum of to C my third son, the sum of so on), and that at the first term of Whitsunday or Martinmas after their respectively attaining majority, or entering into marriages, whichever of these events shall first happen; with a fifth part more of their faid respective provisions of liquidated penalty in case of failure, and the legal interest of the faid principal sums from the respective terms of payment during the not payment thereof; AND until the said respective terms, I BIND and OB-LIGE me and my foresaids to aliment and maintain my faid children, according to their rank in life, but always with and under the conditions, Gg4 provisions

provisions and declarations herein after expressed: AND, for the further security and more sure payment to my faid children of the foresaid provisions. payable to them respectively as aforesaid, I, the faid A, hereby BIND and OBLIGE me and my forefaids duly and validly, BUT UNDER REVERSION, in manner herein after expressed, to infeft and feise the said B, C and D, NOT ONLY in ALL and WHOLE, an annualrent of to the faid to the faid C, and B. an annualrent of to the faid D, or fuch an annualrent of other annualrents, less or more, as shall correspond by law for the time, to the foresaid principal fums, payable to each of the faid B, C and D, in manner above written, to be uplifted and taken at two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first uplifting thereof at the first term of Whitsunday or Martinmas after the faid B, G and D, shall respectively attain the age of 21 years complete, or after their respective marriages, whichever of these events shall first happen, and so on, to be uplifted termly and continually thereafter during the not payment of the respective provisions forefaid, with a fifth part more of each term's annualrent of liquidated penalty in case of failure, furth of ALL and WHOLE—(the lands described)—or furth of any part or portion thereof, readiest rents and duties of the same; BUT ALSO, in ALL and WHOLE the faid lands and others themselves, in real security

curity to the faid B, C, and D respectively, of the principal fums provided to them, in manner foresaid, with interest and liquidated penalties, as above expressed, AND THAT by two several infestments and manners of holding; the one thereof, as well with respect to the right of annualrent as to: that of property in security, to be held of me the faid A and my foresaids in free blench, for payment of a penny Scots, on the ground of the faid lands, at Whitfunday yearly, if asked only; and the other of the faid infeftments to be held from me and my foresaids of our immediate lawful superiors of the faid lands, in manner following; viz. the faid infeftment of annualrent in free blench. for payment of a penny Scots money, on the ground of the faid lands, at the term of Whitfunday yearly, if asked only, and the infestment of property in fecurity as aforesaid, by the same tenure, and as freely in all respects as I, or my foresaids, hold or may hold the said lands ourfelves; AND THAT either by refignation or confirmation, or both, the one without prejudice to the other; and for that purpose to grant all neceffary deeds, with procuratory of refignation and precept of fafine, when required; BUT ALWAYS WITH and UNDER the conditions, provisions, and declarations hereinafter specified, and which are hereby ordained to be verbatim ingrossed in the fasines to follow hereon, viz. PROVIDING and DE-CLARING, as it is hereby expressly PROVIDED and DECLARED.

DECLARED, that in case any of my faid children shall happen to die during their minority, and unmarried, that, in that case, the portion of the child so deceasing shall accrue and belong to the two furviving children, equally betwint them; · and if either of the two furvivors shall happen to die during their minority, and before their lawful marriage, in that case the provision of the child fo deceasing, with the addition of what accrued to him by the death of the child first deceasing, shall fall and accrue to my heir, and to the furviving child, equally betwixt them; DECLARING that this bond of provision shall be in full fatisfaction to the faid B, C, and D, of all portion natural, bairns' part of gear, executry, or any other thing whatever, which they or any of them can claim through my death, or the death of B their mother, (good will only excepted); un-DER which express provision and declaration these prefents are granted by me, and accepted of by them; RESERVING ALWAYS full power to me, at any time in my life, and even on death-bed, to revoke, alter or innovate these presents, and to augment or diminish the said provisions by a written declaration under my hand, which is hereby declared to be a sufficient exercise of these reserved powets; AND DECLARING, that these presents (though found in my custody at the time of my death, or in the hands of any person to whom I may think fit to entrust the custody of them), shall nevertheless

theless have the full effect of a delivered evident. as I hereby dispense with the want of delivery: WHICH ANNUALRENT RIGHT above written, and RIGHT in SECURITY as aforefaid. I BIND and OBLIGE me and my foresaids to WARRANT to the said B. C. and D, respectively, at all hands and against all deadly, as law will; and further, I make, con-STITUTE, and APPOINT the faid B. C. and D. and their forefaids, my lawful cessioners and assignees, not only in and to the title-deeds of the faid lands. BUT ALSO in and to the rents and duties thereof, from and after the term of payment of the foresaid provisions, during the not redemption, surrogating and substituting the faid B. C. and D, respectively, and their foresaids, in my full right and place of the premises, under reverfion, as faid is, for their fecurity and payment of the sums of money, principal, interest, liquidated expenses, and termly penalties before specified; WITH FULL POWER to them and their foresaids to demand, receive, and discharge the rents and duties before assigned, and to do every thing in relation thereto which I could have done before granting hereof; and further, if the faid B, C, and D, shall hold the said lands and others forefaid of me and my foresaids, I bind and onlice me and them to infest and seise them therein, without any composition; and I oblige me to assign and make over, as I hereby assign and make over to the faid B, C, and D, and their foresaids, the whole whole non-entry and other duties and casualties which may fall and be exigible during their non-entry; AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on six days' charge, and all other execution necessary, may proceed, on a decree to be pronounced hereon in common form; and, for that purpose, constitute

, my procurators, &c. And to the effect the faid B, C, and D, and their foresaids, may be insest and seised, not only in the annualrent before mentioned, uplistable surth of the said lands, but also in the lands and others themselves, in security, as said is, and to be held a me or de me, in manner above written; I Desire and REQUIRE you

, and each of you, jointly and feverally, my bailies in that part, to the effect after specified, hereby specially constituted, that, on fight hereof, ye pass to the ground of the faid lands and others, and there give and deliver to the faid B, C, and D, respectively, or their foresaids, heritable state and sasine, with actual, real, or corporal possession, NOT ONLY of the faid annualrents, viz. to the faid B, the annualrent of , to the faid C, the annualrent , and to the faid D, the annualrent of , or such annualrents, less or more, of as shall by law for the time correspond to the faid

faid principal sums, payable to the saids B, C. and D, respectively, in manner foresaid, to be uplifted and taken at the faid two terms in the year, Whitfunday and Martinmas, by equal portions, beginning the first half year's payment at the first term of Whitsunday or Martinmas which shall happen after the said B, C, and D, shall respectively have attained the ages of twenty-one years complete, or after their respective marriages. whichever of these events shall first happen, and so on at each respective term thereafter, during the not redemption of the respective sums, furthof ALL and WHOLE the lands and others foresaid. or furth of any part or portion thereof, readiest rents and duties thereof, BUT ALSO of ALL and WHOLE the faid lands and others themselves. IN REAL SECURITY to the faid B, C, and D, respectively, of the foresaid principal sums, payable to each of them, in manner foresaid, interests due, thereon, and liquidate penalties and termly failures above expressed, if incurred; AND THAT by delivery to each of the faid B, C, and D, or their foresaids, or their certain attorney or attornies, in their names, bearers hereof, of earth and stone of the ground of the said lands, and a penny money for the faid annualrent, and all other fymbols usual and necessary, TO BE HELD in manner above expressed; DECLARING ALWAYS, as it is hereby expressly PROVIDED and DECLARED. that the foresaid annualrents and lands and heritages

tages before disponed, out of which the same is uplistable, shall be redeemable by me the said A and my foresaids, or by our assignees, from the said B, C, and D, respectively, and their before written, by payment to them, or lawful confignation for their behoof respectively, of the foresaid principal sums of and and

, with the interests due thereon, and liquidated penalties and termly failures resting and incurred at the time, together with the necessary charges that shall happen to be expended by the faid B, C, and D, and their foresaids, in insefting or otherwise securing themselves in the said annualrents and lands, and likewife all expenses incurred by them in conveying or discharging and renouncing these presents, agreeably to an account to be given by them, AND THAT at and against the said terms of payment, or at the term of Martinmas in any subsequent year; and if the same shall fall on a Sunday, then on the Monday following, on lawful premonition always of forty days, to be made by me and my forefaids to the faid B, C, and D, respectively, and their abovewritten, in presence of a notary public and witneffes, as effeits, THE PLACE OF REDEMPTION to be the Parliament-House, in that place where the Commissaries usually sit; AND the constanation, in case of absence or refusal, to be in the hands of the Treasurer of the Bank of Scotland for the time, on the part of the configner; AND an extract

tract hereof shall be as effectual for using the said order of redemption, as if a particular letter of redemption had been granted by the said B, C, and D, or their foresaids, for that effect: These things in noways ye leave undone; which to do, I commit to you, jointly and severally, full power, by this my precept of saine, directed to you for that effect. In witness whereof, &c.

Bond of Provision by a Father to his Second son with a substitution—the provision payable at the first Whitsunday or Martinmus after the death of the grantor, if his spouse be then dead; if she survives, one moiety payable then, and the other at the death of the wife—the wife's provisions dedeclared preferable, and a prohibition to assign or discharge during the minority of the disponee.

I, A, from the paternal love and affection I bear to C my fecond eldest fon, do hereby BIND and OBLIGE me, my heirs, executors, and fuccessors whomsoever, but with and under the provisions and conditions herein after expressed, to make payment of the sum of 1000l. Sterling to the said C my son, and the heirs of his body, or his or their assignees; whom falling, to the heirs of my own body, equally amongst them, and their assignees; whom failing, to D, his heirs or assignees whomsoever; and that in manner following;

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viz. the whole of the faid provision of 100ch. Sterling, at the first Whitsunday or Martinmas after my death, if B my wife shall have predeceased me; but if she shall survive me, there shall be payable at the first Whitsunday or Martinmas after my death, 500l. only of the faid provision, with a fifth part more of the principal fum due at this term, of liquidated penalty, in case of failure, with the interest of the principal sum due, from the term of Whitfunday or Martinmas immediately preceding my death, during the not payment thereof; and in case of the survivance of B my wife; and that sool only shall be due at the first Whitsunday or Martinmas after my death, the remaining moiety of the faid provifion, being 500l, shall be payable at the first Whitfunday or Martinmas after the death of the faid B with a fifth part of the faid moiety of liquidated penalty in case of failure, and interest of the faid moiety, from the term of payment during the not payment thereof; PROVIDED ALWAYS as it is hereby PROVIDED and DECLIARED, that any liferent provisions, or other provisions, made or to be made by me in favour of the faid B my wife, shall be preferable to the sums hereby payable in every competition on my estate and effects; AND PROVIDED ALSO, as it is hereby expressly PROVID-ED and DECLARED, that the provisions hereby given to the faid C shall be in full fatisfaction to him of all he can elaim or demand from me, or from

from my estate or effects, as his legitim, portion natural, or share of my executry, or as heir or executor of the faid B, his mother, or of my faid wife's deceased father or mother, or others to whom she may have succeeded, or in virtue of any contract made or to be made betwixt the faid B and me, or in any other manner of way: EXCEPTING, that he may fucceed to me as my heir or executor, on failure of my other heirs or disponces; AND PROVIDED LIKEWISE, that it shall not be in the power of the faid C, or of any other of my children; during their minority, to alter the substitution of heirs hereby made, or to legate or gratuitously assign or dispose of the forefaid fums hereby payable, or any part thereof, to any person or persons whomsoever; EXCEPTING ONLY, that he or they may uplift, and assign or discharge, as much of the foresaid sums, as may be necessary for his or their apprentice fees or education; RESERVING ALWAYS full power to me, at any time in my life, to ALTER OF RECAL this bond of provision, in whole, or in part.— Clause dispensing with the delivery, &c. (in common form.)

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Additional Bond of Provision to a Child, under condition that she shall marry with consent of her Parents, &c.

I, A, considering, that by contract of marriage entered into betwixt B and me, of date, the fum of 1000l.

Sterling was provided, if one daughter only should be procreated of the marriage, in full of all she should claim: which provision was payable to the daughter at the first term of Whitfunday or Martinmas after her majority or marriage, whichever of them should first happen, with interest and penalty in manner therein expressed: WHICH MARRIAGE being dissolved by the death of the faid B, leaving only one daughter, C, who, in virtue of the faid contract, is entitled to the faid provision of roool. Sterling, and I being resolved to increase her provision, under the conditions herein after expressed, no therefore BIND and OBLIGE me, my heirs, executors and fuccessors, to pay to the faid C, my daughter, in addition to her former provision, and to her heirs, executors or affignees, the fum of sool. Sterling, at the first term of Whitsunday or Martinmas after her marriage, or my death, whichever of these events shall first happen, with 100l. Sterling of liquidate penalty, in case of failure, together with the due and legal interest

of the faid principal fum, from and after the faid term of payment, yearly and termly, as long as the same shall remain unpaid; PROVIDING and DE-CLARING ALWAYS, as it is hereby expressly pro-VIDED and DECLARED, that in case the said C shall marry, during my lifetime, without the express confent of me the faid A, or after my death, without the confent of M, her uncle, brother to the faid B, THEN, and in that event, she shall forfeit her right and interest to the foresaid additional provision of 500l. Sterling, and these presents shall become, and are hereby declared to be, ipso facto, void and null, and the faid principal fum shall fall and belong to my heir male, his heirs or assignees; And it is hereby further provided and DECLARED, that in case the said B shall never marry, she shall have no right to uplift any part of the faid principal fum of 500l. Sterling when the same becomes payable, nor to assign the fame, nor to contract debt, or do any other act or deed which can anyways affect the faid principal fum, all which acts and deeds are hereby declared to be void and null; AND WHICH 500l. shall, on the death of the said C unmarried, fall to my faid heir male and his foresaids; BUT referving, in this last case, to the said C, the yearly interest of the faid sum during her life, and with power to her to receive and discharge the faid interest, and to take all steps necessary for properly securing the said principal sum for Hh 2

the purposes herein expressed; As Also, it is hereby PROVIDED and DECLARED, that in case the said C shall marry during my lifetime, and with my consent, it shall be in my power, notwithstanding the terms of payment above expressed, to suspend the payment of the said principal sum to the first term of Whitsunday or Martinmas after my death; I being always BOUND and OB-LIGED, as I hereby BIND and OBLIGE myself to pay the legal interest of the said 500l. Sterling, from and after the first term of Whitsunday or Martinmas after the marriage of the faid C, until the foresaid suspended term of payment, viz. the first term of Whitfunday or Martinmas after my death, with a fifth part more of the faid yearly annualrent for each term's failure: AND I con-SENT to the REGISTRATION hereof in the books of Council and Session, or other Judges' books competent, that letters of horning on fix days' charge, and all other execution necessary, may follow on a decree to be interponed hereto, in form, as effeirs; and, for that purpole, I consti-TUTE

MY PROCURATORS. In WITNESS WHERE-OF, &c.

#### SECT. III. CONVEYANCE OF THE FOREGO-ING PROVISIONS.

THE form of these conveyances is so much the same with that of other personal rights, that it were improper to detain the reader with examples, which will be better explained under the general title Assignations, in the next volume. A single instance, therefore, will suffice.

Assignation by a Daughter of a Provision made to her by her Father.

I, C, daughter of the deceased A and B, con-SIDERING that, by contract of marriage entered into betwixt them, of date , the general provision of 5000l. Sterling was settled and provided for the daughters or younger children of the faid marriage, subject to the power of divifions therein referved to the faid A my father; AND THAT, in virtue of the powers thereby referved to him, he, by a bond of provision, of , BOUND and OBLIGED him, his date heirs, executors and fucceffors, to pay to me, myheirs, executors or affiguees, at the first term of Whitfunday or Martininas after my attaining Hh 3

majority, or after his death, the sum of 2000L Sterling, as my share and proportion of the said general provision, with a fifth part more of penalty in case of failure, and the legal interest of the faid principal fum, from and after the faid term of payment, during the not payment thereof; in terms of which obligation, I have regularly received the interest of the said provision from the term of Whitfunday , being the first term after my attaining the years of majority, down to the term of Whitfunday last; and seeing that D has made payment to me of a fum of money equivalent to the fums hereby conveyed, THEREFORE, I have MADE, CONSTITUTED and APPOINTED, as I hereby MAKE, CONSTITUTE and APPOINT, the faid D, his heirs, executors and fuccessors, my lawful cessioners and assignees, in and to the said fum of 2000l. Sterling, provided to me in manner foresaid, and to the interest of the said sum from the term of Whitfunday last, (all former interest having been paid up to me and discharged), and in time coming, during the not payment of the faid principal fum, with the faid liquidated penalty in case of failure; and in and to the said contract of marriage, entered into betwixt my faid father and mother, in so far as it relates to the said provision; and in and to the bond of provision executed by my father in my favour, whole clauses, tenor and contents thereof; with power to the faid D to pursue for, demand and discharge, the fums

fums hereby affigned, and, generally, to do every thing in the premises which I might have done before granting hereof; WHICH ASSIGNATION above written, I BIND and OBLIGE me and my forefaids to WARRANT to the faid D and his forefaids. from all facts or deeds done or to be done by me in prejudice thereof; AND I have herewith DE-LIVERED up to the faid D extracts of the foresaid contract and bond of provision, to be used by himand his foresaids as their own in all time coming. AND I consent to the registration hereof in the books of Council and Session, or other Judges' books competent, therein to remain for prefervation, and that all other execution necessary may follow on a decree to be interponed hereto; and for that purpose CONSTITUTE

'MY PRO-

curators, &c. In witness whereof, &c.

SECT. IV. DISCHARGE OF THE FOREGO-ING OBLIGATIONS.

Renunciation by a Wife of her Liferent Annuity.

I, B, spouse of A, considering that, by contract of marriage, dated , entered into between the said A and me, he thereby H h 4 bound

bound and obliged him, his heirs and fucceffors, in the event of my furviving him, to make payment to me of a free annuity of 100l. Sterling during all the days of my life; beginning the first term's payment thereof at the first term of Whit? funday or Martinmas immediately following his death, with a fifth part more in case of failure, and the legal interest of the said annuity, from the respective terms of payment, during the not payment thereof; AND SEEING I am willing, for certain causes, to RENOUNCE and DISCHARGE the foresaid annuity; THEREBORE, I have RENOUN-CED and DISCHARGED, as, by these presents, I RENOUNCE and GIVE UP, for myself and my forefaids, all claim to the faid annuity of 100l. Sterling provided to me by the faid contract of marriage, and exoner and discharge my faid hufband and his forefaids, thereof, in all time coming, and of the faid contract itself, in so far as: obligatory for payment of the faid annuity; WHICH RENUNCIATION above written, I oblige me to ratify in due form; AND I CONSENT to the RE-GISTRATION, &c. (as in the preceding example.)

Discharge by a Widow to her Husband's Executor, of a sum of money provided to her in full of her share of the moveables, and of certain articles of furniture set apart for her by the contract of marriage.

I, B, widow of the deceased A, considering that, by contract of marriage entered into betwirt the faid deceased A on the one part, and me, with confent of B my mother, on the other part, bearing date the faid deceafed A. amongst other provisions in my favour, thereby BOUND and OBLIGED himself, his heirs and succeffors, to pay to me, in case I should survive him. the fum of 500l. Sterling, in place of the third or half of the household furniture that should be in his different dwelling houses at the time of his death, and that at the first term of Whitsunday or Martinmas next and immediately following his death, with 100l. of penalty in case of failure, with the lawful interest thereof, from the day of his death, to the faid term of payment, and thereafter, as long as the fame should remain unpaid; WHICH SUM of 500l. Sterling, in place of the third or half of the furniture, with the annuity after mentioned, in my favour, I, with consent of my faid mother, accepted of in full of all terce of lands, half or third of moveables, and share

of household furniture that might be claimed by me in the event of my surviving my said husband, excepting tea tables, tea plate, and tea china, and all other articles belonging to the tea equipage, which the said A thereby made over and assigned to me, in case I should survive him, as the said contract of marriage, of date foresaid, containing several other provisions, more fully bears; AND SEEING that, upon the death of the said A, my husband, which happened on the

, I received the tea tables, tea plate, tea china, and all other articles belonging to the tea equipage, which had been in the poffession of the said A, and was duly put in possesfion of the same; AND THAT A, brother-german and heir served and retoured to the said deceased A, my husband, has now, by the hands of

, made payment to me of the fum of 500l. Sterling, with interest thereof from the said , the day of my said husband's death, whereof I hereby acknowledge the receipt; THEREFORE I hereby EXONER, QUIT-CLAIM, and DISCHARGE the said A, his heirs and executors, not only of the foresaid tea table, tea plate, tea china, and others foresaid, assigned to me by the said contract, and delivered into my possession in manner foresaid; BUT ALSO, of the foresaid principal sum of 500l., and interest thereon, in terms of the said contract, provided to me in place of my share of the household surniture, and other claims

claims foresaid, all of which, as well as the said contract of marriage itself, in so far as it relates to the faid obligation for payment of the faid fum of 500l. Sterling, and interest thereof, and to the obligation to deliver the faid tea equipage, but no further; and of all action, diligence and execution competent to me thereon, and all that has or is competent to follow on the same; AND I BIND and OBLIGE me, and my heirs and fucceffors, TO WARRANT this discharge at all hands, and against all deadly, as law will; but declaring, that this discharge shall in nowise tend to weaken or prejudge my right to an annuity of 500l. Sterling, payable to me yearly during my life, under the faid contract of marriage, nor my infeftment thereon, for fecurity of the faid annuity; AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or other judges' books competent, therein to remain for prefervation; and for that purpose constitute

PROCURATORS, &c. In witness whereof, &c.

#### Discharge of a Jointure.

I, B, relict of A, grant me to have received from , the fum of 100l. Sterling, as one half year's jointure from Martinmas, to Whitfunday next, in virtue of my marriage

riage contract with the said A, bearing date
; of which half year's jointure
the said , and all concerned,
are hereby discharged; which discharge I oblice
me to warrant at all hands, and against all
deadly; and I consent to the registration
hereof, (as before).

### Discharge of a Bond of Provision.

I. D. CONSIDERING that A, my father, by an obligation contained in a contract of marriage entered into betwixt him and B my mother, bear-, bound and obliged ing date himself, his heirs, executors and successors, to make payment to the children of the faid marriage, other than the heir in his lands and estate, of the fum of 5000l. Sterling, to be divided by him amongst the faid children, in such proportions as he should think fit, by a writing under his hand; and failing thereof, the same to be divided equally amongst the said children, and that at the first term of Whitsunday or Martinmas immediately after his death, and bearing interest from the day of his death, with a fifth part more of penalty in case of failure; and which general provision is hereby declared to be in full of all that the faid children could demand in the name

of legitim, portion natural, bairns' part of gear, executry or otherwise, on the death either of the said A, or of the said B, as the said contract more fully bears; AND CONSIDERING that the said marriage dissolved in the month of

last, by the death of the said A, without his having exercised the power of division of the said general provision of 5000l. Sterling, leaving four children other than the heir who fucceeds to the estate of the said A, of which four I am one, and, as fuch, have right to one-fourth part of the faid general provision; AND SEEING that C, the heir of the faid A, who, under the faid contract, fucceeds to his lands and estate, has made payment to me of the fum of 1250l. Sterling, as my fourth share of the said general provision, with 23l. 28. 6d. Sterling of interest due thereon, from the day of the said A's death to this date, amounting, the faid principal and interest, to the fum of 1273l. 28. 6d. Sterling, of which I hereby grant the receipt; THEREFORE I hereby Ex-ONER, ACQUIT, and DISCHARGE the faid C, and all concerned, NOT ONLY of the faid provision, and interest due thereon, and penalty before mentioned, all contained in and due by the contract of marriage foresaid, with all action or execution competent to me thereupon, BUT ALSO of all legitim, portion natural, bairns' part of gear, executry, and every thing which I can claim or demand from the estate and essects of my said father, or

in and through his death, or the death of B, his spouse; which discharge I bind and oblige me, my heirs and successors, to warrant at all hands, and against all deadly, as law will; and I consent to the registration, &c. (as in the preceding examples), for preservation.

## SECT. V. REVOCATIONS BY HUSBANDS OR WIVES.

Revocation by a Husband of a Donation made stante matrimonio.

I, A, considering that, by the contract of marriage entered into betwixt B and me, of date , she is provided in a jointure and other provisions, which are thereby declared to be in full of all other claims competent to her or her executors, in the event of her or my death, in manner more fully mentioned therein; AND FURTHER CONSIDERING, that by a bond of provi-, I increased her joinfion, of date Sterling, which, on a ture to the fum of more narrow investigation of my affairs, I find to exceed the fum that, in justice to my heirs, I can fet apart for my widow, and therefore it becomes necessary (however contrary to my inclination), that I should take the benefit of the law which declares

clares donations betwirk married persons to be revocable; AND THEREFORE, consistently with that privilege, I hereby REVOKE the said additional bond of provision, and all other conveyances and securities made and executed by me in savour of the said B, since the date of our said contract of marriage; ALL which I hereby DECLARE to be void and null, and of no avail, sorce or effect against me, my heirs or successor; AND I consent to the REGISTRATION hereof in the books of Council and Session, or others competent, therein to remain for preservation; and for that purpose, constitute

PROCURATORS, &c. In witness whereof, &c.

## Revocation by a Wife, of a Donation made by her in favour of her Husband.

I, B, CONSIDERING that the deceased A, my late husband, by our contract of marriage, of date , provided me in a free liferent annuity of 100l. Sterling, during all the days of my life after his death, payable at two terms in the year, Whitsunday and Martinmas, by equal portions, and beginning the first term's payment at the first Whitsunday or Martinmas after his death, with interest and penalty, in manner more fully expressed in the said contract; AND THAT, during the lifetime of my said husband,

I was prevailed on gratuitously to renounce and discharge the said annuity by a deed of renuncia-: which renunciation . tion, of date has been extremely prejudicial to me, and therefore I am resolved to revoke the same, under the function of the law which permits married perfons to revoke all donations they may have been induced to make during the subfistence of their marriage; THEREFORE, that I may be restored against the said renunciation granted by me in manner foresaid, I hereby REVOKE and RECAL the fame, to the end that I may be reponed against the same, and restored to my foresaid free liferent annuity of 100l. Sterling, in terms of my faid contract of marriage; AND I hereby DE-CLARE, that the faid revocation was granted by me without good or onerous cause, and merely to gratify my faid husband; AND I CONSENT to the REGISTRATION, &c.—(as in the preceding example.)

This finishes the subject of marriage settlements; and I proceed, in the next part, to the forms of completing the title to heritable and moveable subjects in the person of the heir and executor.

# OF THE TITLE OF THE HEIR, AND OF THE EXECUTOR.

WE are now arrived at those forms by which property, heritable and moveable, is transferred from the ancestor to the heir. This subject naturally divides into two heads; the one, containing examples of the forms by which the title of the heir in heritage is completed; the other, of those on which the title of the executor is founded. We have also to consider in what way a title is made up to the property, whether heritable or moveable, of a bastard, dying without heirs of his own body. The subject will therefore be treated under distinct chapters.

# CHAP. I.

OF THE FORMS BY WHICH THE TITLE OF THE HEIR IN HERITAGE IS COMPLETED.

THE forms by which the right of the heir in heritage is completed, have in view, 1. To VOL. v. \* I i establish establish the title of the claimant, whether it befounded on the public law of succession, or on
the private will of the deceased; and, at the
same time, the consent of the heir to undertake the character of heir, and consequently
those burdens which the law throws upon him.
2. To give that possession to the heir which
is held to be the test of property, and which
is necessary for completing the right of the
heir to the estate, and giving him the full jus
in re.

In England, it would appear that the form of completing the title of an heir, is much fimpler than with us; and that an entry made on the estate by the proper heir, duly certified, will be held to invest him with a complete right of disposal of the estate, (Blackst. b. 2. ch. 14.) Whereas, in Scotland, the mere possession of heritage vests no right in the heir. It is true, the statute 1695, c. 24, which enables the creditor or disponee of an apparent heir three years in possession, under certain circumstances, to attach the estate, may be considered as vesting such a right; but this is a statutory regulation in favour of creditors, founded on expediency, and the bare possession of an apparent heir; for the longest period vests

no right in him, which, on his death, can be taken up by his heir. It is therefore the fafine or infeftment in the person of the heir, proceeding on a precept iffued in confequence of his character of heir, being either proved by the verdict of a jury before the sheriff of the county, or attested by the private deed of the fuperior, that completes the title of the heir, where the right of the ancestor was real. does it form an exception to this, that the general fervice, without fasine, vests in the heir the personal right which was in the ancestor. fo as to make it transmit on his death to his own heir, in place of the ancestor's: since, by the general fervice, the whole right which was in the ancestor, or jus ad rem, is transferred by the general fervice, and gives the perfon fo ferved, the fame right which was formerly held by the ancestor, of completing the jus in re.

The form of proceeding, by which the character of heir, as well as the intention of the claimant to assume the character, and reprefent his ancestor, is almost the only vestige of the antient jury trial which prevailed universally in civil causes. This trial proceeds on a brieve from Chancery; directed, in the case of

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a general service, to any judge ordinary; in the case of a special service, to the sheriff of the county within which the lands lye; or occasionally, and on grounds shown, to the macers of the Court of Session, as sheriffs in that part, named by a special commission, the forms of which shall be immediately explained.

These are the regular services of an heir in heritage; but there are peculiarities in the title of the heir. Thus, by statute, the heir may, on the observance of certain regulations, be relieved from the burden of a general representation of the ancestor, and rendered liable only to the extent of the property over which his title extends. The fuperior is also entitled to declare the right of the heir, and to give him infeftment in the estate of his ancestor. And practice has introduced another title equivalent to the fervice, by authorifing an adjudication on a trust bond; which vests a title in the heir, makes his right transmit, and enables him to challenge all rights affecting the effate, without incurring a passive title.

It is on these accounts I find it necessary to divide this chapter into the following sections.

#### of services, and arrangement, &c. 501

- 1. Of the general fervice.
- 2. Of the special service.
- 3. Of the service cum beneficio inventarii.
- 4. Of the precept of clare constat.
- 5. Of the trust bond and adjudication.

# SECT. I. OF THE GENERAL SERVICE.

THE object of the General Service is to vest in the heir every personal right which flood in the ancestor; but this title may be necessary, not only to the heir at law, but to the heir of provision, or of entail. Hence, a distinction has been made by systematic writers betwixt a general fervice, and a fervice in general; the former being used by the heir at law for the purpole of carrying every personal heritable right which stood in the ancestor and his heirs whomsoever; the latter, for vesting a title to those heritable rights destined to heirs of provision, not requiring infeftment, or on which none had followed. distinction creates little variation on the form of the fervice; and I shall mark, in passing, the necessary changes on the general service, where

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#### 502 PROCEEDINGS IN GENERAL SERVICE.

where the title is intended to vest a provision in the heir.

## PROCEEDINGS.

The fervice is conducted by a person in the name of the claimant, who signs the claim, and attends the service. His power arises from a mandate, in these terms.

## Procuratory for expeding a General Service.

I, B, eldest lawful son of the deceased A, do hereby make and constitute

and each of them, jointly and severally, to be my procurators and attornies, with full power and authority to them, for me, and in my name, to purchase brieves furth of his Majesty's Chancery, and to procure me duly and lawfully served heir to the said B, my father—(or, where the service is for the purpose of carrying right to an unexecuted procuratory or precept in a deed destined to a certain series of heirs, the procuratory will be expressed in this way—" To pro-" cure me duly and lawfully served nearest heir of provision in general to the said A, my fa-" ther, in terms of a disposition, of date

" granted by to my faid father,

se and the other heirs of provision therein men-"tioned:"—(or, where the object is to take up an unexecuted procuratory or precept of sasine in an entail, an example will be found under the head of Entails, in the section which treats of the Renewal of the Right in the Heir of Entail. page 257.)—and to procure fuch fervice retoured to Chancery; AND THEREUPON, and upon all and fundry the premifes, to ask and take instruments and documents, and generally to do every other thing in relation thereto, which I could do myself, if present; RATIFYING hereby, and AP-PROVING of, whatever my faid procurator shall lawfully do, or cause to be done in the premises; AND I CONSENT to the REGISTRATION hereof in the books of Council and Session, or others competent, therein to remain for preservation; and, for that purpole, CONSTITUTE

my procurators, &c.

In witness whereof, &c.

The first step is, to take out a brieve from Chancery; which is done by lodging a note with the clerks in Chancery, stating to what Judge the brieve is to be directed; the names, designations, and relationship of the parties; and the character of the service, whether it be "as nearest and lawful heir to the deceased;"

I i 4

or, "as nearest and lawful heir of provision "in general under such a deed." The brieve of the general service may be directed to any Judge ordinary. It runs in these terms.

Brieve directed to the Judge Ordinary for expeding a General Service.

GEORGIUS, Dei gratia, Britanniarum Rex, Fideique Defensor, vicecomiti et balivis suis de SALUTEM: Mandamus vobis et præcipimus, quatenus per probos et fideles homines patriæ, per quos rei veritas melius sciri poterit, magno sacramento interveniente, diligentem et fidelem inquifitionem fieri faciatis, DE QUIBUS TERRIS et annuis redit. cum pertinen. quond. A, pater B, latoris præsentium, obiit ultimo vestit. et sasit, ut de seodo, ad fidem et pacem nostram, infra dict. vice-ET si dict. B sit legitimus et propinquior hæres dict. quond. A, sui patris, de dict. terris et annuis redit. cum pertinen. ET si sit legitimæ ætatis; ET quantum valent dict. terræ et annui redit. cum pertinen. nunc per annum; ET quantum valuerunt tempore pacis; DE QUO tenentur; PER QUOD servitium tenentur, ET in cujus manibus nunc funt, QUALITER, per quem, ob quam causam, et a quo tempore; ET QUOD per dict. inquisitionem diligenter et sideliter fact. esse inveneritis

ritis sub sigillis vestris, et sigillis eorum qui dict.
inquisitioni intererint faciend. ad capellam nostram
mittatis, et hoc brevi teste meipso. Apud Edines
Burgum, die mensis , regnique
nostri anno

## Execution written on the back of the Brieve.

Upon the day of years, being a market day, and at market time, I, L M, sheriff officer, by virtue of the within written brieve. and at command of the sheriff depute of the she-, passed to the market cross of riffdom of , head burgh of the faid sheriffdom; and there, after crying three feveral oyesses, making open proclamation and public reading of the faid brief, in his Majesty's name and authority, and in name and authority of the said sheriff depute, I lawfully proclaimed the same to be served before him or his substitute in the (court house, &c.) upon the day of next to come. in the hour of cause; and, for that effect, I lawfully fummoned, warned and charged, all perfons having or pretending to have interest in the faid matter, to compear, day, hour and place foresaid, to hear and see the service of the said brief, or to object thereto; with certification as effeirs. This I did, after the form and tenor of the faid brief, and warrant of the sheriff, in all points; a just copy of which brief, with a note

of citation to the above effect, I affixed and left on the market cross; which copy was subscribed by me, bore the date hereof, and contained the names and designations of the following persons hereto subscribing with me, witnesses specially called and required to the premises, &c.—(Signed by the officer, and by the two visinesses.)

#### PROCEEDINGS.

Fifteen days must elapse before the service can proceed. After that period, the brieve and executions being produced in Court, the procurator craves, that the brieve may be remitted to an Inquest; and fifteen jurymen having . been procured, or gathered from the persons in Court, they are impannelled; and, having given their oaths that they shall be faithful, and return a true verdict, they chuse one of their members to be Chancellor of the Jury: this election is made by the majority of votes. judge then takes the oath of the officer (by whom the brieve was executed), that he truly executed the brieve in terms of his execution. as well as the oaths of the witnesses, that they were present, &c.; the forms of which will be more minutely explained in the fervices before

the

the macers. The clerk of Court then presents the claim. \*

#### Claim in a General Service.

Honourable persons and good men of inquest, I, B, eldest lawful son of A, say unto your Wisdoms, That the said A, my father, died at the faith and peace of our Sovereign Lord the King; and that I am nearest and lawful heir in general to the said A, my father; and that I am of lawful age.

HEREFORE I beseech your Wisdoms to serve and cognosce me nearest and lawful heir in general to my said deceased father, and cause

you

Unto the Honourable the Magistrates of Canongate,
The PETITION of B:

Humbly Showeth,

That your petitioner has obtained a brief from his Majesty's Chancery, directed to your Honours, for serving him nearest and lawful heir to the deceased A, his father; but, in respect the witnesses for proving his propinquity reside at a distance, and cannot conveniently attend your Honours at the time of the service,—

May it therefore please your Honours to grant warrant and commission to W. S. or , to take the oaths and depositions of such habile witnesses as the petitioner shall find it necessary to adduce in proof of his propinquity; and to report the same to your Honours.

According to Justice, &c.

<sup>\*</sup> It is sometimes requisite to obtain a commission for examining the witnesses of the propinquity; in which case, a petition will be presented to the Judge, in this form.

your clerk of court to retour my fervice to his Majesty's Chancery, under your seals.

According to Justice, and your Wisdoms' answer.

Signed by the claimant or his mandatary.

## Claim in a general Service as Heir of Provision.

Honourable persons, and good men of inquest, unto your Wisdoms says B, eldest lawful son of the deceased A, That the said deceased A, my father, died at the faith and peace of our Sovereign Lord the King; and that I am eldest son, and also nearest and lawful heir of provision in general to the said A my father, by virtue of, and in terms of a disposition, of date , granted by to the said A my father, and to the heirs male of his body, and the other heirs of provision therein described; and the other lawful age.

HEREFORE I befeech your Wisdoms to serve and cognosce me nearest and lawful heir of provision in general to the said A my sather under the said disposition, and to cause your clerk of court to return my service to his Majesty's Chancery, under your seals.

According to Justice, and your Wisdoms' answer.

Sometimes the deed is more fully narrated in the claim; but it is fufficiently accurate to state it in the manner done here.

#### PROCEEDINGS.

The claim is read; and all entitled to object are called by the officer in these terms; ' Oyes! oyes! oyes! If there be any person or perfons, who have any thing to object against the fervice of the brieve, purchased furth of our Sovereign Lord's chancery by B, for cognofcing him nearest and lawful heir of the deceased A his father, let them come forth, and they shall be heard; once, twice, thrice.' It is at this period, that the objector ought to appear, and state his objections; or, should they be overruled, he may produce the advocation. which he will have prepared. But no objector appearing, the procurator for the claimant takes instruments in the hands of the clerk of Court, and protests against all not compearing, and that filencemay be enjoined them for the future: The claim is then read, and the evidence produced by which the propinquity is proved; \* the officer again

<sup>\*</sup> Where it is a service as heir of provision in general, the deed containing the destination must be produced to the jury; and this will be expressed in the notes or act of service made up by the clerks; and it is now the common and the safe practice to state the fact in the retour, which ought always to be a copy of the claim.

gain warns those having any thing to object, that if they do not appear, the brieve will be served. After this, the jury are called by the clerk, and the question put, 'serve or not?' and the majority of the jury having voted to serve the claimant, instruments are again taken by the procurator in the hands of the clerk of Court: A verdict is made out, and signed by the chancellor; and the sheriff interposes his authority, which he signs.

In this manner, the fervice is completed; notes of it are preferved in the fervice book by the clerk of Court; and a retour is made up therefrom, and lodged in chancery.

Minute of Service preserved in the Service Book by the Clerk to the Service.

Curia vicecomitatus de , tenta in per O, vicecomitem dict. vicecomitatus specia-aliter constitutum, die mensis , anno Domini .

#### CURIA LEGITIME AFFIRMATA.

ANENT the brief directed furth of his Majesty's chancery, for serving B, eldest lawful son of the deceased A, nearest lawful heir in general to the said A his father, (or 'nearest and lawful heir of provision in general to the said A his father,

- ther, by virtue of, and in terms of a disposition of date, granted by to the said A and the heirs male of his body, and the other heirs of provision therein particularly expressed. —(It will be observed, that this part must be regulated by the words of the claim)—dated the day of last, executed at the market cross of, head burgh of the said sheriffdom, on the day of heriff officer, before
- these witnesses COMPEARED M as procurator for the faid claimant, in virtue of a written procuratory figned by him, dated : and craved, that the faid brief, claim, and instructions thereof, might be remitted to the knowledge of an inquest, viz.—(here the names of the inquest will be inserted)—which persons of inquest being folemnly fworn by the faid sheriff depute, they elected the faid P to be their chancellor; AND they having confidered the brief and claim, and and having deponed affirmative to the propinquity mentioned in the brief and claim, they ferved and cognofced the faid B nearest and lawful heir in general to the said deceased A his father, (or, they served and cognosced the faid B nearest and lawful heir of profion to the faid A his father, as faid is), conform to the said brief, claim, and instructions thereof, in all points; upon which the faid procurator took

took instruments that none compeared to object.

Signed by the Chancellor.

The sheriff interposes his authority to the premisses.

Signed by the Sheriff.

The retour made up by the clerk from these minutes, is in these terms.

# Retour of a General Service.

Hæc inquisitio facta suit in curia vicecomita-, coram honorabili viro P, vicetus de comiti dict. vicecomitat. dia menfis . anno Domini , per hos probos et fideles patrize homines subscript. viz.--(here the names of the jury are inserted)—Qui jurati dicunt, magno facramento interveniente, quod quondam A, pater B, latoris præsentium, obiit ad fidem et pacem S. D. N. Regis: ET quod dict. B est legitimus et propinquior hæres dict. quond. A. sui patris; ET quod est legitimæ ætatis. In cujus REI TESTIMONIUM, figilla quorundam corum, qui dict. inquisitioni intererant, cum brevi S. D. N. Regis direct. intus clauso; una cum sigillo et sub**scriptione** clerici dict, vicecomitatus funt appenfa die mensis , anno Domini præscript.

Signed by the clerk of Court.

The

The retour given out by Chancery subjoins to the copy of the retour the following certificate.

Hæc est vera copia principalis retornatus super præmissis in cancellaria S. D. N. Regis remanen. Ext. copiat. et collat. per me Q. scribam Edinburgen., substitutum honorabilis viri R K, armigeri, ejusq. cancellariæ directoris. Sub hac mea subscriptione, &c.

(Signed) Q, subst.

The retour gives to the heir a right to all the personal and heritable rights which were in the ancestor; and he may, under this title, complete his right, by resigning on the unexecuted procuratories, or taking insestment on the unexecuted precepts which were in the person of the ancestor.

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SECT.

## SECT. II. OF THE SPECIAL SERVICE.

Procuratory for Expeding a Special Service.

This deed will correspond with the former style in the general service, excepting in this clause—To procure me duly and lawfully served nearest and lawful heir to A, my father, (or heir male and of tailzie of the said A, my father), in all and whole the lands, teinds, heritages, annualrents and others, in which my said father died last vest and seised, and to procure such service retoured to Chancery; and thereafter to obtain me duly and lawfully infest and seised in the said lands and estate; and thereupon, and upon all and sundry the premises, &c.—(the style goes on, as in the former example).

The brieve is the same, and it is executed in the same manner. The claim in the special fervice is in this form.

## Claim in a Special Service.

Honourable persons, and good men of inquest, I, B, immediate younger brother-german of the deceased'A, say unto your Wisdoms, that the said deceased A, my brother, died at the faith and peace of our Sovereign Lord the King, last vest

vest and seised, as of see, in ALL and WHOLE the lands and barony of all lying in the parish of &c. AND THAT I am the immediate younger brother-german of the faid A, and nearest and lawful heir of line-(where the lands are under a destination, add, and also heir male and of tailzie) of the faid A my brother, in the faid whole lands and barony of in terms of a charter of refignation thereof, under the great feal, dated , and fafine there-;—(or where there is a destination. on dated add, whereby the faid lands are disponed to A and to the heirs male of his body; whom, failing, &c. -here the destination of the charter will be stated, until it comes to the claimant, then say, whom failing, to the other heirs therein mentioned, as by the faid charter and inftrument of fafine following thereon, dated . and registered will more fully appear) -AND THAT I am of lawful age; AND THAT the faid lands are now worth, yearly, the fum of '-(this will be the new extent, as appearing from a retour of the lands) and were worth the fum of money forefaid. in time of peace—(this will be filled up with the old extent; and it will be observed, that if there be no evidence of the old and new extent of the lands in question, these will be struck according to a rate drawn from a comparative view of the valued rents and old and new extents of the neighbouring lands, and the valued rents of the lands in the retour. . The proportion is in this way easily ascertained, Kk2 and

and the report of an accountant will satisfy the jury. If again the lands hold feu, this part of the claim will run on in these terms) - AND THAT the faid ' lands are now/worth the feu farm duties after " mentioned, and were worth the same in time of e peace; '-AND THAT they hold immediately of our Sovereign Lord the King, and his Royal fuccessors, in blench farm (or, 'in feu farm, ') fee and heritage, for payment of-(here the reddendo, as expressed in a former charter or retour of the lands, will be inserted)-AND THAT the faid whole lands and others above specified, are, and have been in the hands of our Sovereign Lord, by reason of non-entry, ever since the death of the faid A my brother-german, which happened on the day of and fo for the years and months, or therefpace of by, in default of me, his nearest and lawful heir. not having hitherto profecuted my just right thereto.

HEREFORE, I befeech your Wisdoms to SERVE and COGNOSCE me nearest and lawful heir of line—(where there is a destination, add, AND ALSO heir male and of tailzie)—to the said A my brother-german, in the lands, barony, and others above described, and to cause your clerk of Court to return my said fervice to his Majesty's chancery, under the most of your seals.

According to Justice, and your Wisdoms' answer.

#### PROCEEDINGS.

The proceedings in the special service are materially the same with those in the general fervice.—The principal difference is, that the jury (at least the Chancellor in their presence) must compare the description of the lands, the holding, the new and old extent; and, for this purpose, while the clerk to the service is reading the claim, the agent for the claimant ought to point out the description of the lands and holding in the former charters, and the old and new extent in former retours, or as ascertained by the report of an accountant. The propinquity is then proved, as in the gegeral fervice, by two witnesses (who may also be jurymen); and their depositions being taken by the judge, are written on the claim by the clerk to the fervice, and figned by the judge and by the chancellor of the jury.—Their evidence will also establish the period of the nonentry. These circumstances occasion the only changes on the form of proceeding; and I pass to the form of the retour of the special fervice.

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# Retour of a Special Service.

HÆC INQUISITIO facta fuit in prætorio burgi de L, tenta coram M'Q. substituto Mri G, advocati, vicecomitis deputati vicecomitatus de L, decimo fexto die mensis Aprilis, anno Domini millesimo, &c. per hos probos et fideles homines patriæ subscript. viz. W, scribam in Edinburgo; G, fcribam in L; S, apothecarium in L; B, mercatorem ibid.; I, chirurgum ibid.; H, brasiatorem ibid.; B, maximum balivum ibid.; G, fabrum lignarium ibid.; L, pistorem, B mercatorem ibid.; W de H; S, capilliciarium ibid.; mercatorem ibid.; D. mercatorem ibid.; et H. ephippiarium ibid. Qui jurati dicunt, magno facramento interveniente, quod quond. A, ultimo de , frater-germanus immediate senior de B, nunc , latoris præsentium, obiit ultimo vestit. et de fasit. ut de seodo, ad sidem et pacem S. D. N. Georgii tertii regis, IN TOTIS ET INTEGRIS terris cum pertinen. earund., jacen. infra parode et dict, vicecomitatum de L, omnibus unit, et erect. in integram et liberam baroniam, , secundum cartam resigvocat. Baroniam de nationis ejustd. fact. dat. et concess sub magno sigillo Scotiæ, quond. de et hæredibus mafculis de suo corpore procreand. Quibus DEFI-CIENTIBUS, &c. seniore hærede fæmella omnes alias hæredes portionarias excluden., et succeden. fine divisione in modo inibi mentionat. de data,

terræ

&c. PER QUAM CARTAM ordinatum est, quod unica fafina tunc et omni tempore futuro capiend, per prædict. quond. et hæredes suos talliæ et fuccessores aut assignatos supra mentionat., apud principale messuagium aut maneriei locum de , vel super fundum ullius partis aut portionis prædict. terrarum et baroniæ, per traditionem terræ et lapidis fundi prædict. terrarum. duntaxat, absque ullo alio symbolo, erit tam sufficiens ac valida pro omnibus et fingulis terris aliisque supra mentionat. cum pertinen. erect. in libera baronia ut præfertur, quam si particularis fasina super unamquamque partem et portionem earund. per illos suscepta fuisset, non obstan. quod eadem terræ discontiguæ, et in diversis locis, parochiis et jurisdictionibus, jacent; AC ETIAM dict. carta Provisumet Declaratum est, quod hæredes talliæ et successores inibi mentionat, tenebuntur et obligabuntur assumere, uti, et gerere cognomen. arma, et designationem de , tanquam propria fua arma, cognomen, et defignationem in omni tempore futuro. Er quod prædict. B, nunc de , est frater germanus immediate junior dict. demortui A, ultimo de , ac proximus et legitimus hæres liniæ, ac etiam hæres masculus et talliæ prædict. quond. A, fui fratris, in totis et integris dict. terris et baronia de aliifque fupra mentionat. cum pertinen. fecundum destinationem et ordinem successionis ante relatam; ET QUOD est legitimæ ætatis; ET QUOD prædict. Kk4

terræ et baronia de comprehenden. particulares terras fupra mentionat. cum pertinen. nunc valent per annum summam monetæ Scotiæ, et valuerunt tempore pacis summonetæ prædict.; ET QUOD valuatus reditus illius partis dict. terrarum et baroniæ , jacen, infra dict. parochiam de de

, per quam subjectæ sunt solvere regiam taxationem, vulgo lie King's cess or land tax, ex-ET QUOD prædict. terræ et barotendit ad. &c. , comprehenden. ut dict. est, cum pertinen., perprius tenebantur de S. D. N. Rege in taxata warda, et nunc, virtute acti Parliamenti anno vigesimo Georgii secundi Regis, intitulat. 66 A&t for taking away the tenure of ward hold-" ings in Scotland, and for converting the same " into blanch and feu holdings," &c. immediate tenentur in capite de dict. S. D. N. Rege et successoribus suis superioribus earundem, in libera alba firma et hæreditate in perpetuum, pro annua solutione unius denarii monetæ Scotiæ, apud festum Pentecostes, nomine albæ firmæ divoriæ, si petatur tantum; ET QUOD dict. terræ ac baronia de

, comprehenden. ut ante dict., cum pertinen., fuerunt et nunc sunt in manibus S.D.N. Regis continuo a decessu dict. A, qui obiit quarto die mensis Decembris ultimo elapsi, ratione non introitus, nunc per spatium quatuor menfium et duodecem dierum, aut eo circa, in defectu dict. B, ejus justi hæredis in dict. terris et

baronia

baronia cum pertinen. jus suum huccusque minime prosequen. In cujus rei testimonium, sigilla majoris partis personarum ante nominat. qui dict. inquisitioni intererant, una cum brevi in præmissis direct. incluso, et sub sigillo dict. vicecomitis substituti, ac cum subscriptione L, notarii publici, ac clerici deputati dict. vicecomitatus de L, ac clerici hujus curiæ deservitionis ante dict. sunt appensa.

(Sic subscr.) L, Cl. Dep.

Haec est vera copia principalis retornatus super præmissis in cancellaria S. D. N. Regis remanen. Ext. copiat. et collat. per me D R, scribam Edinburgen., substitutum honorabilis viri R K, armigeri, ejusque cancellariae directoris. Sub hac mea subscriptione, &c.

D R, Subst.

In this manner, the character of heir in the subjects specified in the service is completed; but no right to these subjects is vested in the heir without sasine. We have supposed the lands to be held of the Crown; and, in that case, a precept is issued from Chancery for infesting the heir. But, when the lands hold of a subject, the heir may either obtain from the superior a precept of clare constat, or compel him

# 522 PRECEPT FROM CHANCERY, PROCEEDING

him to grant it in the manner which will be afterwards explained; or, even without a fervice at all, the subject superior may give a precept of clare, the sasine on which will complete the title of the heir to the lands.— I proceed at present with the precept from the Crown.

# Precept on the foregoing Retour.

GEORGIUS, Dei gratia, Magnae Britanniae, Franciae et Hiberniae, Rex, Fidei Defensor, VICECOMITI et BALIVIS SUIS de L, SALUTEM: Quia per inquisitionem de mandato nostro per vos factam, et ad capellam nostram retornatam, compertum est, . frater ger-QUOD quondam A, ultimo de manus immediate senior de B, nunc de latoris praesentium, obiit ultimo vestitus et sasitus ut de feodo, ad fidem et pacem nostram, In Totis et INTEGRIS terris de, &c. jacen. &c. omnibus unit. et erect. in integram et liberam baroniam, vocat. Baroniam de , secundum cartam resignationis ejusd. fact. dat. et concess. sub magno sigillo Scotiae, quond. de haeredibus masculis de suo corpore procreand. Quibus deficientibus, &c. seniore haerede faemella omnes alias haeredes portionarias excluden., et fucceden. fine divisione in modo inibi mentionat.

de data, &c. PER QUAM CARTAM ordinatum est, quod unica sasina tunc et omni tempore suturo capiend. per prædict. quondam et hæredes suos talliæ et successores aut assignatos supra mentionat., apud principale messuagium aut maneriei locum de , vel fuper fundum ullius partis aut portionis prædict. terrarum et baroniæ, per traditionem terræ et lapidis fundi prædict. terrarum, duntaxat, abíque ullo alio fymbolo, erit tam sufficiens ac valida pro omnibus et fingulis terris aliifque supra mentionat, cum pertinen. erect. in libera baronia ut præfertur, quam fi particularis fafina fuper unamquamque partem et portionem earund. per illos suscepta suisset, non obstan. quod eædem terræ discontiguæ, et in diversis locis, parochiis et jurisdictionibus, jacent; AC ETIAM dict. carta PROVISUM et DECLARATUM est, quod hæredes talliæ et successores inibi mentionat. tenebuntur et obligabuntur assumere, uti et gerere cognomen, arma et designationem de , tanquam propria fua arma cognomen et defignationem in omni tempore futuro; ET QUOD prædict. B est legitimæ ætatis; ET QUOD de nobis in capite immediate tenentur: Vobis PRÆ-CIPIMUS et MANDAMUS, quatenus præfato B, nunc , vel fuo certo actornato, latori præde fentium, fasinam earundem juste haberi faciatis fine dilatione, salvo jure cujuslibet; AC CAPIEND. monetæ Scotiæ, per dupli-SECURITATEM de çationem albæ firmæ divoriæ præfat. terrarum et baroniæ

baronize de , comprehenden. et jacen. ut præfertur, in terminis acti Parliamenti vigesimo anno regni nostri, intitulat. 'An act,' &c. nobis debitis; et hoc nullo modo omittatis; præsentibus post proximum terminum minime valituris; teste meipso, apud edinburgum, vigesimo quinto die mensis Aprilis, regnique nostri anno trigesimo tertio, 1760.

Vicecomiti et balivis suis de L, pro B nunc de , fratri.

(Signed) JR, Dept.

Sasine following on the foregoing Precept.

In Dei nomine, amen. Per hoc praesens publicum instrumentum, cunctis pateat evidenter et fit notum; Quod anno Domini millesimo septingentesimo sexagesimo, mensis vero Maii die quinto, regnique S. D. N. Georgii Secundi, Dei gratia, Magnæ Britanniæ, Franciæ, et Hiberniæ, Regis, Fideique Defensoris, trigesimo tertio; in mei notavii publici et testium subscribentium praesentia, personaliter comparuit, super solum et sundum terrarum de , partem terrarum et ba-, honorabilis vir J M'Q de B, roniæ de substitutus magistri J C, advocati, vicecomitis deputati vicecomitatus de L, cum discreto viro J S, scriba in Edinburgo, actornato, et in nomine B, , fratris germani immediate nunc de junioris

junioris demortuo A, ultimo de mi et legitimi hæredis liniæ, ac etiam hæredis masculi et talliæ prædict. quondam A, sui fratris; HABENS et in suis manibus TENENS quoddam præceptum fasinæ e cancellaria S. D. N. ad et in favorem prænominati B, factum, datum et concessum, et ad prædictum vicecomitem deputatum et balivos suos direct. pro sasina prædict. B, tanquam hæredi liniæ, ac etiam hæredi masculo et talliæ prædict. A, ejus fratri germano, danda, de TOTIS et INTEGRIS terris de . &c. omnibus unit, et erect. in integram et liberam baroniam, vocat. Baroniam de , ut in eodem præcepto safinæ, de data postea specificat., latius contipetur; QUODQUIDEM PRÆCEPTUM SASINÆ PIZdictus actornatus, in nomine prefat. B, nunc de

, presentavit, exhibuit et deliberavit dict. vicecomiti substituto, illum humiliter requirens, quatenus pro executione dict. præcepti sasinæ debite
siendi, secundum tenorem ejusdem procederet,
quis vero vicecomes substitutus dictum præceptum sasinæ in manibus recepit, et mihi notario publico subscribenti, perlegendum, publicandum, et astantibus testibus in vulgari sermone exponendum, tradidit et deliberavit; quodquidem
feci et cujusquidem præcepti sasinæ tenor sequitur, et est talis, Georgius, &c.—(here the foregoing precept was verbatim inserted)—Post cujusquidem præcepti sasinæ prælectionem, et astantibus testibus vulgari sermone expositionem, prædict.

dict. vicecomes substitutus, virtute dict. præcepti sasinæ et sui balivati officii inibi sibi commissi. statum et sasinam hæreditariam, pariter, et possesfionem, realem, actualem, et corporalem, TOTARUM et integrarum terrarum et baroniæ de aliorumque supra mentionat. cum pertinen., prænominato B, per terræ et lapidis fundi dict. terrarum et baroniæ de , in manibus dict. actornati, et in nomine dict. B, ibidem personaliter præsentis et accipientis, ut usus est, traditionem et deliverationem, secundum tenorem dict. præcepti sasinæ supra insert. DEDIT, tradidit, contulit pariterque deliberavit. Super quibus omnibus et singulis præmissis prædict. actornatus, et in nomine dict. B, hoc præsens publicum instrumentum, seu plura publica instrumenta, sibi fieri petiit. ACTA ERANT HÆC super sundum dict. ter-, partem dict. terrarum et rarum de baroniæ de. horas inter decimam et undecimam ante meridiem, aut eo circa, sub anno. die mensis, anno regnique Regis quibus supra: PRÆSENTIBUS ibidem , testibus ad et præmissa specialitet rogatis et requisitis.

This safine is closed by the notary's docquet in common form; only that he adds to his designation, 'Ac clericus deputatus vice-comitatus de L;' and none but the sherist clerks can be notaries to sasines issued on precepts for infesting an heir in lands held of the Crown.

It is this fasine which fully wests the property of the lands in the heir; and it will be obferved, that the sasine must be taken before the term next after its date, as it is to that term only, that the warrant of insestment extends. Should the time, by any mistake, be allowed to elapse, a new precept must be obtained from the Chancery, in which the duties will be calculated up to the new term; to which, in like manner, the execution of the warrant is confined.

### SERVICE BEFORE THE MACERS.

Before leaving this division of our subject, however, it may be proper to observe, that where lands lye in different counties, (which, in the common case, would render a service for each county requisite), it may be adviseable to apply to the Court of Session for a commission to the macers of Court, as sheriffs in that part, which will enable the heir to complete his title to the lands by one service: The different forms in the service before the macers, and such variations as take place on the forms we have had occasion to consider, shall be stated. The first

step is, to present a bill to the Court, praying for a warrant to obtain a commission to the macers, as sheriffs in that part.

Bill to the Court, praying for a Warrant for a Commission to the Macers.

My Lords of Council and Session: Unto your Lordships humbly MEANS and SHOWS B, eldest lawful son of the deceased A, THAT I am to purchase brieves furth of our Sovereign Lord the King's chancery, for ferving me nearest lawful heir in special to the said deceased A my father, in ALL and SUNDRY lands, heritages, annualrents, and others, wherein my father died last vest and feifed as of fee, at the faith and peace of our faid Sovereign Lord, lying within the sherissdoms of. respectively: Bur IN REGARD that separate services within the said different jurisdictions are expensive and tedious, and that feveral questions and debates may arise with respect to serving the said brieves, which cannot so well be determined before the sheriffs of the faid sheriffdoms, or their substitutes; THERE-FORE, necessary it is, to have the faid brieves ferved before your Lordships' four ordinary macers,

cers, or any two of them, jointly, as the sheriffs constituted for that effect, of the said sheriffdoms nf and and that within the Parliament or new Sellion House of Edinburgh, as the most fit and convenient place, where all parties having or pretending to have interest, may be heard, and any doubts which may happen to arise may be best resolved and determined: THEREFORE I beseech your Lordships to grant warrant to the Director of his Majesty's Chancery, or his Depute, to emit and direct furth thereof, a commission under the quarter seal, otherwise called the testimonial of the feal to be made use of within Scotland in place of the great sealthereof, in common form of Chancery, MAKING, constituting and ordaining, the faid four ordinary macers, or any two of them jointly, sheriffs for that effect, of the faid sheriffdoms of

civing, granting and committing to them, or to any two of them, jointly, as faid is, his Majesty's full power and special command to sit within the said Parliament or New Session-house of Edinburgh, for serving the said brieves, and for that end to receive and cause duly proclaim the same; and to begin, affirm and sence Courts, one or more, and, if needful, to continue the same; and to make, constitute and ordain clerks, serjeants, officers, dempsters, and all other necessary members of Court, for whom they shall be vol. v.

L1 answerable.

Instruction of the cause furthern a sufficient number of persons of inquest most proper and least fuspected, and who best know the verity of the matter, to appear accordingly, and pass upon the inquest of the said brieves, each person under the pain of 40l. Scots; AND, GENERALLY, all and: every other thing requifite and necessary, in and concerning the premises, to use and exerce, as fully and freely as the sheriffs of the said sheriffdoms might have done therein themselves, respectively, if the faid fervice had been expede before them; AND THAT your Lordships may ADMIT and DE-CLARE the faid Parliament or New Seffion-house of Edinburgh, to be as lawful and sufficient, to the effect foresaid, as if the same were the usual court place of the respective head boroughs of the faid theriffdoms of and may likewise DISPENSE with the time of vacance, if any fuch shall happen to be during the time of the faid fervice; and to declare the fame to be equally good and fufficient, as if done in lawful time of Seffion.

According to Justice, &c.

Signed by a Writer to the Signet.

Deliver-

## Deliverance on the foregoing Bill.

Apud Edinburgum, die Fiat ut petitur—Dispensing with the place and time of vacance.

Signed by the Lord Ordinary on the Bills.

Signed by the Clerk to the Bills, previous to the subscription of the Judge.

This bill requires no warrant, and is passed of course. When it is signed by the Lord Ordinary, it becomes a warrant to the Clerks in Chancery to give out a commission to the macers, which is in this form:

## Commission to the Macers.

GEORGIUS, &c.—Omnibus probis hominibus ad quos præsentes literæ nostræ pervenerint, Salutem: Quia dilectus noster B, silius legitimus natu maximus A, per ejus supplicationem nostri Concilii et Sessionis Dominis porrectam, exposuit, quod brevia e capella nostra impetraturus est, pro deservitione sui tanquam legitimi et propinquioris hæredis dict. demortui A, ejus patris, in omnibus et singulas terris, hæreditatibus, aliisque, in quibus obiit

biit ultimo vestit. et sasit. ut de feodo, ad sidem et pacem nostram, jacen. infra vicecomitatum de ET QUIA tediofum et sumptuosum effet, varias deservitiones coram unoquoque judice dict. vicecomitatuum deducere, et varia et dubia quæstiones oriri possint in deductione dict. servitiorum, quæ non tam facile folvi poterint coram vicecomitibus dict. vicecom, vel substitut, corum; ADEO necesse sit ei commissionem nostram sub testimonio sigilli intus mentionat, modo et ad effectum subscript. directam habere, quemadmodum in dict. supplicatione latius continentur. FECIMUS, CONSTITUIMUS et ORDINAVIMUS, 10noreque præsentium ex dict. Dominorum deliberatione, FACIMUS, CONSTITUIMUS et ORDINA. Mus, dilectos nostros quatuor clavigeros ordinarios coram dich. Dominis, vel quoscunque eorum duos, conjunctim, vicecomites nostros in hac parte dict. vicecomitat, nostri de , DANDO, concedendo et committendo iis, vel quibuscunque corum duobus conjunctim, nostram plenariam potestatem et mandatum speciale, infraparliamenti vel novæ sessionis domum de Edinburgo, pro dict. brevium deservitione sedendi; et ad hunc effectum, eadem brevia recipiendi, aperiendi, debiteque proclamari causandi; curiam seu curias, unam seu plures, inchoandi, affirmandi, affigendi, tenendi, et quoties opus fuerit continuandi; clericos, serjandos, adjudicatores, omnesque alios officiarios, et curiæ membra necessaria, faciendi

ciendi, creandi, constituendi, ordinandi, pro quibus respondere tenebuntur; inquisitionem personarum dignarum, et minime suspectarum, ad numerum sufficientem, infra bondas et jurisdictiones prædict. habitan. summonendi, et comparere causandi quamlibet personam, sub pœna 40 librarum; et generaliter omnia alia et fingula faciendi, dicendi, gerendi et exercendi quæ in præmissis necessaria fuerint seu opportuna. INSUPER, dict. Parliamenti vel novæ sessionis domum burgi de Edinburgo, adeo legitimum ad effectum prædict. ac si esset prætorium capitalis burgi dict. vicecom. per præsentes admittamus; cumque loco et tempore feriato, si contigerit, dispensamus: QUARE, universis et singulis quorum interest vel interesse poterit, stricte præcipimus et mandamus, quatenus dict. quatuor clavigeris ordinariis, vel quibuscunque eorum duobus conjunctim, tanguam vicecomitibus nostris vicecomitat. de . et ministris in omnibus et singulis præmissa tangen. seu tangere valen, prompte pareant, respondeant et intendant, sub omni pæna quæ competere poterit in hac parte. DATUM sub testimonio sigilli per Unionis tractat. custodien. et in Scotia vice et loco magni figilli ejufdem uten. ordinat. EDINBURGUM, , regnique die nostri

> Ex Deliberatione Dominorum Concilii et Sessionis.

> > Ll3

Indor- .

# 534 BRIEVES DIRECTED TO THE MACERS,

#### Indorsed.

Script. et figillat. sub testimonio sigilli intus mentionat.; Cancellariæ Directore substituto subscriben. die

Signed by the Substitute Director of the Chancery.

Alongst with the commission, brieves are given out, one for each county in which the lands lye. The brief does not change its form; and the only alteration consists in the address.

### Brieve directed to the Macers.

GEORGIUS, &c. Dilectis nostris quatuor clavigeris ordinariis coram Dominis nostri Concilii et Sessionis, vel quibuscunque eorum duodus conjunctim, vicecomitibus nostris vicecomitat. de in hac parte specialiter constitut. virtute commissionis sub testimonio sigilli inibi specificat. SALUTEM, &c. (in the ordinary style.)

This commission constitutes a new court; and it is necessary that the Judges should not only have accepted of the commission, but that they should give their oaths de fideli; and this

is done in presence of the Lord Ordinary on the Bills; of which a minute is made in this form.

Minute of Acceptance by the Macers.

At Edinburgh, the day of .

IN PRESENCE of the Lord Ordinary on the Bills, COMPEARED

, the four ordinary macers of Session, who accepted of the within commission, and gave their oaths de sideli administratione; whereupon M took instruments in the hands of , one of the depute clerks of Session.

Signed by the Lord Ordinary, and by the Depute Clerk of Session.

The Judges being thus empowered to act, they proceed to name their clerk and officers of court, and to give commissions for executing the brieves, or perhaps a commission to the Judge-ordinary to take the oaths of the officers and witnesses by whom the executions are to be made, to prevent the necessity of the personal appearance of these people in the court of service. These proceedings, which

L,14

are necessary for the purpose of executing the office of judge, form the business of the sust court. The second court is properly the court of service. I shall therefore give the forms of the act, made up on the proceedings in the first court, which will give a connected view of the proceedings; and to this I shall subjoin, in foot notes, the forms, which the proceedings in that court will serve to explain.

FIRST COURT of the Service of the Brieves issued furth of his Majesty's Chancery, at the instance of B, for serving him Heir in Special to his Father; HELD within the Parliament or New Session-House of Edinburgh, in the Manner after mentioned, on the Days after specified, viz.

At Edinburgh, within the New Seffionhouse thereof, the day of

IN PRESENCE of O and P, two of the Ordinary macers before the Lords of Council and Session, compeared , as procurator for B, and produced to the said two macers a commission, issued upon deliverance of the said Lords, out of his Majesty's Chancery, under the quarter seal, dated , constituing and appointing

appointing the four ordinary macers before the faid Lords, or any two of them, to be Sheriffs, in that part, of the sheriffdoms of

for ferving the faid B heir in special of A, his father, in all lands, annualrents, and heritages, wherein the faid A died last vested and seised, as of fee, lying within the faid respective sheriffdoms, and contained in the title-deeds thereof, specified in B's claim; AND PRODUCED ALSO two brieves—(or whatever number of brieves there may be)—likewise issued out of Chancery, and directed to the faid four macers, or any two of them, as Sheriffs in the forefaid sheriffdoms specially conflituted by the faid commission, whereof they had accepted, and given their oath de fideli in the usual form, AND CRAVED that they, as Sheriffs foresaid, should, in terms of the commission, name the necessary members of court, and proceed in the fervice in the usual forms; which being con-SIDERED by the faid two macers, and the commiffion and brief being read, they, as Sheriffs forefaid, NAMED and appointed Q. notary public, to be clerk, S to be officer, T to be dempster, for the first court of the said service, who all made oath de fideli administratione: and then the faid macers caused the faid officers fence the first court of the said service. \* AND THERE-

AFTER,

<sup>\*</sup> This is done by the clerk to the service reading, and the officer repeating after him, as follows—" I fence and " forbid,

AFTER, they elected and choic R, notary public and clerk to the fignet, to be clerk; S to be officer, and T to be dempster of the second court of the said service, who were all likewise swom and made faith de fideli administratione; AND THEN the said macers, as Sheriss foresaid, ordained and gave commission to X and Y, officers, to proclaim and execute the foresaid brieves at the market crosses of the respective burghs of

, as head burghs , and of the sheriffdoms in which the lands lye, on 2 public market day, betwixt the hours of and , in time of open market, and in presence of famous witnesses, to be served within the New Session-house of Edinburgh, upon the next to come, in the hour of day of cause, by virtue of the dispensation contained in the foresaid commission, conform to the laws and acts of Parliament made anent ferving of brieves, in all points; AND ALSO, the faid Judges ordained the faid officers to fummon a proper inquest to attend

<sup>&</sup>quot;forbid, in our Sovereign Lord's name and authority, and of the Judges here present, delegated and commissioned for serving the brieves purchased furth of his Majesty's Chancery, by B, for serving him heir in special to A, his father, by virtue of his Majesty's commission granted to them for that effect; under the quarter seal or testimonial of the seal to be made and used in Scotland in place of the great seal thereof; that none presume or take upon hand to trouble or molest this Court, nor make speech one for another, without leave asked and given, under the pain of law."

attend faid place and day, and each person under the penalty of 40l. Scots; AND LIKEWISE, the faid Judges granted and subscribed a precept to the said officers for that effect, of this date, and caused deliver to them the said brieves, to be proclaimed accordingly; AND THEN the faid Judges adjourned the Court to the day of next, then to be held in this place, and continued the fervice of the faid brieves to the faid day, in the hour of cause, ordaining all parties, having interest, then and there to attend, whereof they were lawfully warned apud acta; whereupon, and upon all and fundry the premifes, fo far as the fame relates to the first Court of the faid service, instruments were taken in the hands of R, clerk to the second Court; and, so far as concerned the fecond Court, in the hands of the faid Q, clerk to the first Court.

This is signed by the two Macers.

This act of Court gives a view of the proceedings; and the following forms are evidently required.—The instruments taken by the clerks of the respective Courts, on the appointment of the officers of the different Courts; the commissions to the officers; the executions of the officers; and, in certain circumstances, the commission to the Judge-Ordinary to take the oaths of the officer and witnesses.—All these I

shall throw into foot notes, that they may not interfere with the act of the second Court; which, taken alongst with that of the first Court, gives a complete view of the whole proceedings in the service. \*

Second Court of the Service of the several Brieves issued forth of his Majesty's Chancery, and purchased by the said B, for serving him heir in special to A, his father, in the lands or others herein specified, continued to and held this day of , within the Parliament or New Session-house of Edinburgh, by the beforenamed four ordinary macers, before the Lords of Council and Session, as sheriffs of the said two several sheriffdoms of and specially constituted for that end, in virtue of his Majesty's commission before specified to them, in that behalf directed.

#### CURIA LEGITIME AFFIRMATA.

In presence of the said macers before named, as sheriffs foresaid, constituted for serving B as heir

<sup>\*</sup> Forms connected with the First Act of Court.

<sup>1.</sup> Instrument under the hand of the Clerk of the 2d Court, on the election of the Clerk and Officers of the 1st Court.

AT EDINBURGH, the day of
IN PRESENCE of me, notary public, subscribing, and clerk
to the second Court, COMPEARED, as procurator

heir to his father A, in manner mentioned in the commission,

curator for B, and passed to the personal presence of , two of the four ordinary macers before the Lords of Council and Session, and produced to them a commission, issued upon deliverance of the said Lords out of his Majesty's Chancery, under the quarter seal, dated , constituting and appointing the four ordinary macers before the said Lords, or any two of them, to be sheriffs, in that part, of the sheriffdoms of , for serving the said B heir in special to the said A, his father, in all lands, annualrents, and heritages wherein the said A died last vested and seised as of fee, lying within the said respective sheriffdoms, and contained in the title-deeds thereof, specified in B's claim; and produced also two brieves (or whatever the number may be), likewise issued out of Chancery, and directed to the said four macers, or any two of them, as sheriffs in the aforesaid sheriffdoms, specially constituted by the said commission, whereof they had accepted and given their oaths de fideli in the usual form, AND CRAVED that they, as sheriffs foresaid, should, in terms of the commission, name the necessary members of court, and proceed in the service in the usual forms; which being considered by the said two macers, and the commission and brief being read, they, as sheriffs foresaid, MAMED and APPOINTED Q, notary-public, to be clerk, S to be officer, and T to be dempster for the first Court of the said service, who all made oath de fideli administratione; and then the said macers caused the foresaid officer fence the first Court of the said service; and, as sheriffs foresaid, they or dained and granted commission to Q and Y to proclaim and execute the said brieves at the market crosses of the said respective burghs of and , as head burghs of the sheriffdoms in which the lands lye, on a public market day, betwixt the hours of . and , in time of open market, and in presence of famous witnesses, to be served within the New Session-House of Edinburgh, upon day of next to come, in the hour of cause, by virtue of the dispensation contained in the foresaid commission, conform to the laws and acts of Parliament made anent serving of brieves, in all points; whereupon and upon ALL and sundry the premises, the said attorney took instruments.

# commission, expede under the quarter seal, and brieves

instruments in my hands: These things were so done within the New Session-house of Edinburgh, in the Inner-house thereof, betwirt the hours of and in the forenoon, day, month, and year foresaid.

Signed by the Clerk of the Second Court. I

A similar instrument is made out and signed by the clerk of the first Court, on the appointment of the clerk and officers of the second Court.

#### Commission by the Macers to the Officers, for proclaiming the Brieves.

, two of the four ordinary macers before the Lords of Council and Session, as sheriffs, in that part, of the sheriffdoms of , specially constituted by a commission under the testimony of the seal appointed by the treaty of Union to be used in Scotland in place of the great seal thereof, proceeding on deliverance of the said Lords, on application of B. for serving and retouring him heir in special of the deceased A, his father, in certain lands and heritages lying in the said sheriffdoms of 2nd , and to expede the said service in the New Session-house of Edinburgh, and dispensing with the term of vacation, DO HERE-By, in virtue of the powers given to us by the foresaid commission, MAKE, CONSTITUTE and ORDAIN (here name the officers), our officers in that part of the said respective sheriffdoms, or either of you, to pass to the market-cross of the head burgh of the said respective sheriffdoms of , upon a lawful market day, betwixt and , in time of open market, in the hours of presence of famous witnesses; and then and there, in his Majesty's name and authority, and ours, to read and proclaim the two brieves directed to us, as sheriffs foresaid, out of his Majesty's Chancery, and herewith delivered to you, FOR SERVING the said B heir in special to the said A, his father, in the lands and heritages wherein he died infeft, lying in the said respective sheriffdoms; the said brieves to be served within the foresaid New Session-house of Edinburgh, before

# brieves directed to them for that effect, COMPEAR-

us the said macers, or any two of us, as sheriffs foresaid, day of next to come; and to WARN and SUMMON all persons having or pretending to have interest in the said matter, by open proclamation, at the said respective market-crosses, and other places needful, to compear before us, day and place aforesaid, in the hour of cause, and hear and see the said brieves duly and lawfully served and retoured to his Majesty's Chancery, in due and competent form, or to object, as accords; AND you are to make intimation or certification to all concerned, as effeirs; As ALSO, we CHARGE and COMMAND you, that ye lawfully summon, warn and charge a sufficient number of persons, most worthy, least suspected, and who best know the verity of the matter, to compear before us, the said day and place, in the hour of cause, with continuation of days, to pass upon the inquest of the said brieves, each person under the penalty of 40l. Scots, as ye will answer to us thereupon = which to do, we commit to you, and each of you, conjunctly and severally, our full power, by this our commission and warrant directed to you for that effect; and we hereby give power and commission to the sheriff-deputes of the said respective sheriffdoms, or their substitutes, and to the bailies of the said burghs, respectively, or either of them, to take the oaths and depositions of the foresaid respective officers, and witnesses upon the verity of the executions of the foresaid brieves, and to report their oaths and depositions to us. Given and subscribed by us in Court, AT EDINBURGH, the day of

#### 3. Memorandum for the Officer.

Upon the next, you are, betwixt the hours of 11 and 12 forenoon, to go to the market cross of and there, in presence of two witnesses, you will read over the brieve marked No. 1.; also read over the precept from the macers, and then the schedule subjoined to the copy of that brieve, also marked No. 1.; after which, you will affix the copy and schedule at the market-cross. You will then sign, and make the witnesses sign the execution

and produced his procuratory, with the faid commission

tion on the back of the brieve; and the witnesses must return with you to Edinburgh, to verify the execution by their oaths.

- 4. Schedule of what is to be signed by the Officer, Executor of the Brieves, and by the Witnesses, and left at the Market Cross.
- as officer of the sheriffdom of specially constituted, to the effect after mentioned, by virtue of a precept, of date the given to me by the macers of the Court of Session, as sheriffs of the said sheriffdoms, specially constituted, for serving the said brieve issued forth of his Majesty's Chancery, at the instance of the said B, conform to the commission to them, or any two of them, under the quarter seal, dated DO hereby PROCLAIM the foresaid brief, whereof a just copy is prefixed, to be served before the said macers of Session. or any two of them, as sheriffs of the said sheriffdoms of within the Parliament or New Session-house of Edinburgh, upon the day of hour of cause, with continuation of days; and warn and summon all persons having or pretending to have interest, to compear time and place foresaid, to hear and see the said brief served, or to object against the same; with certification, that the macers, as sheriffs foresaid, will proceed in the service, conform to the brief and commission directed to them. for that effect. This I do at the market-cross of head borough of the said sheriffdom, upon the dat before these witnesses and
- 5. Execution returned by the Officer, signed by him and by the Witnesses—It is written on the back of the Brief.

Upon the day of day, within the borough of

years, being a market I, Y, officer appointmission and brieves, the precept granted by two of the said ordinary macers, as sheriffs foresaid, to

X

ed by the macers of the Court of Session, as sheriff of the said sheriffdom, and at command, and by virtue of their precept to me, dated passed to the marketcross of the head borough of AND THEREAT, between the hours of and in open market time, and after crying three several oyesses, and public reading of the said brief, and of the said precept, I duly and openly PROCLAIMED the said brief to be served before the said macers of Session, or any two of them, as sheriffs foresaid, by virtue of his Majesty's commission to them for that purpose, and that within the Parliament or New Session-house of Edinburgh, the day of next to come, in the hour of cause, with continuation of days, and duly and lawfully WARNED all persons having or pretending to have interest, to compear, time and place foresaid, to hear and see the within brief served, or to object thereto, and made certification to them as effeirs; and I affixed and left upon the said market cross, a schedule, containing a copy of the Brief, date, and substance of this execution, and the names and designations of the following witnesses, present thereat; and hereto subscribing, viz.

Signed by the Officer.

Signed by the two Witnesses.

 Report of the Commission by the Macers for examining Officers and Witnesses executing the Brieves before the Judge Ordinary.

Αt day of in presence of one of the bailies of the borough of commissioner appointed for the purposes after mentioned: as procurator for B, and pro-COMPEARED duced a commission, bearing date , directed to the said bailie by two of the ordinary macers before the Lords of Council and Session, as sheriffs, in that part, of the sheriffdoms of specially constituted by the commission therein mentioned, dated ; by which M m first

X and Y, naming and authorifing them as officers of the fecond court of the faid fervice, to proclaim

first mentioned commission, directed to the said bailie, the said macers having constituted messenger, to be their officer in that part, for executing, at the market cross of , the brief purchased furth of his Majesty's Chancery, for serving the said B as nearest and lawful heir in special to the deceased A, his father, in the said lands and other heritages wherein he died last vested and seised; THEY, in like manner, granted power and commission to the said bailie for taking the oaths of the officer and witnesses employed by him upon the verity of the execution of the said brief, with power to the said commissioner to take the said depositions, and report the same, as in the said commission is contained; AND the said procurator having also produced the said brief, duly executed, upon the current, by the said officer in that part, by virtue of the said precept and commission, at the market cross of in presence of and witnesses, the said bailie accepted of the said office and commission, and named to be his clerk, to whom he administered the oath *de fidel*i.

This is signed by the Bailie and Clerk.

IMMEDIATELY THEREAFTER, the said brief, together with the execution of it, being read by the clerk, in presence of the said commissioner, and of the said Y, officer, executor thereof, and of and witnesses: and the said Y being first solemnly sworn and interrogated, depones, That he did, upon the day of , being one of the market days in the burgh of to the market-cross thereof, as head burgh of the said shire, and there, in time of public market, betwixt the hours of in the forenoon of the said day, and after three several oyesses, openly proclaim and execute the said brief in presence of the said witnesses, according to the execution on the back of the brief, duly subscribed by him and the said witnesses. All which is truth, as he shall answer to God.

Signed by the deponent.

Signed also by the Commissioner and Clerk.

proclaim and execute the foresaid brieves, WITH executions of the same, AND depositions of the said officers and witnesses present thereat on the verity of the said executions, \* TOGETHER with the instruments taken upon the institution and creation of the members of the first and second courts, and prorogations of the said services to this

AND LIKEWISE, the said and witnesses, who being both solemnly sworn, one after another, by the said commissioner, they DEPONE, That the said Y did lawfully execute the said brief, at the time and place above mentioned, in presence of them, as witnesses; and that the execution on the back of the said brief, subscribed by the said Y and them, is a just and true execution. All which is truth, as they shall answer to God.

Signed by the Witnesses, Commissioner, and Clerk.

WHAT is written on this and the preceding page, is a just and true report of the commission before-mentioned.

Signed by the Commissioner and Clerk.

Where the messenger and witnesses are examined before the macers for the purpose of verifying the executions, the oath is put and given by the messenger in this form: I swear by God, and as I shall answer to God at the great day of judgment, that I proclaimed and executed the brieve in the manner mentioned in the indorsation thereof, signed by me. And this is truth, as I shall answer to God. The oath given by the witnesses is in these terms: I swear by God, &c. that I heard, and saw, and stood by, when Y, officer, proclaimed and executed the brieve, in the manner mentioned in the indorsation therefore, of, signed by me. And this is truth, &c. In place, therefore, of stating, as in the text, the production of the depositions, it will be stated, that the messenger and witnesses appeared personally, and verified the executions on oath.

this day; AND the faid B his claim, CRAVING, that the inquest might serve and cognosce him heir of the said deceased B, his father, in ALL and SUNDRY the lands, baronies, heritages and others therein specified, and to return his service to his Majesty's Chancery, with the said brieves enclosed, in the usual form: And the said Judges, as sheriffs forefaid, having caused publicly read the whole writs and papers above mentioned, and confidered the fame, and finding the whole procedure to be legal and formal; \* thereafter, all parties having interest, or pretending to have interest, were thrice lawfully called, as use is, + and none compearing to object, the faid procurator thereupon took instruments, and protested contra omnes non comparentes, and that filence might be enjoined them for the future; and defired and required, that the claim and matters therein contained might be referred to the knowledge of an inquest of persons most worthy, least suspected,

and

<sup>\*</sup> Where the officer and witnesses appear in the court of service, and verify their executions, you say nothing of the depositions of the officers, being produced at that part to which the preceding note refers; but you say here, 'they then called for the said officer by whom the said brieves were executed, and the witnesses present with him there at, for verifying the said executions, who being solemnly and judicially sworn, deponed, that the same was truly and faithfully done agreeably to the executions thereof, in all points.'

<sup>†</sup> The form of this calling will be found in the notes to the acts of the first court of service.

and who best know the verity of the matter; WHICH DESIRE the faid Judges, as sheriffs in that part foresaid, finding to be just and reasonable, admitted of the same, and remitted the said claim, and matters therein contained, to the knowledge of the inquest following, being all lawfully warned to pass thereupon, viz. (here insert the names and designations of the inquest); who being all fo-.lemnly fworn de fideli administratione, \* they elected and chose one of their number, to be chancellor of the inquest; AND the faid claim being thereafter openly and publicly read, with the instructions thereof, viz. a charter under the great feal (describe it shortly), with the fasine following thereon, in favour of the said A, dated and recorded also a retour of the said lands (describe this shortly); and and being fworn, and having deponed affirmative to the propinquity mentioned in the brief and claim; + AND Mm 3 the

<sup>\*</sup> This oath is administered by the Judge—The jury stand up five at a time. The Judge says, 'You will be faithful in this inquest:' to which the Jurymen, holding up their hands, while they are addressed by the Judge, give their affirmative.

<sup>†</sup> The witnesses are sworn and examined in presence of the jury, and their depositions are written in the margin of the claim, in this form: 'Being solemnly sworn, examined and interrogated, depone affirmative to the propinquity of the claimant, and to the time of his father's death.' This is signed by the witnesses and macers;—

the faid inquest having also inspected the forefaid commission under the quarter seal, the acceptance thereof aforesaid, together with the said brieves, precept for executing the fame, and executions of the faid brieves, with the depositions of the said officers and witnesses upon the verity of the faid executions, and whole process, proceedings, and instruments of the respective courts of the faid fervice: AND FINDING the fame all orderly proceeded, and legally done, and the forefaid claim sufficiently verified and instructed, and all persons having, or pretending to have interest, being frequently called, and none compearing to object; the faid inquest, all in one voice, without any variance, by the mouth of their chancellor, ferved and cognofced the faid B nearest and lawful heir of the faid deceased A, his father, in ALL and SUNDRY the lands, heritages and others contained in the faid claim; AND ORDAINED the faid fervice, with the faid brieves enclosed, to be retoured to the Chancery under the hand of the clerk of Court, and the feals of the inquest, or most part of them, as use is, in due and competent form: WHEREUPON, and upon ALL and sun-

DRY

or, where two of the jury are witnesses, the entry on the margin of the claim will be in this form: 'and two of the inquest, depone affirmative to the propinquity and time of A's death.' This is signed by the witnesses and macers.

DRY the premises, the said procurator foresaid asked acts of Court and instruments; AND to which verdict of the inquest, the said Judges, as sherists foresaid, interponed, and hereby interpone their authority, and likewise ordain the same to be retoured in manner above written.

This, as well as the act of the first Court, is signed by the Macers.

There is subjoined to the claim of service, a verdict in the following terms.

### Verdict of the Jury.

At Edinburgh, the day of The whole persons of inquest being solemnly sworn, received, and admitted to pass upon the foresaid fervice; and having all heard, feen, and confidered the faid B's claim above written, with the whole instructions and verifications thereof, produced in court, and whole acts, steps, and procedure had in the faid process, and the proof adduced for instructing his propinquity, and right and title to the lands and others contained in his claim, as nearest and lawful heir in special therein to the faid deceased A, who died last vest and feised as of fee, in the lands and others forefaid; and all parties having interest being fre-Mm 4 quently

quently called, and none appearing to object, they unanimously, by the mouth of their chancellor, ferved, and hereby serve, affirmative, the said B heir in special to the said A, conform to the said claim and instructions thereof produced; and ordain the service, with the brieves, to be retoured to his Majesty's Chancery. In TESTIMONY whereof, these presents, and the claim, are, in their presence, and by their direction, subscribed by their said chancellor.

This is signed by the Chancellor.

The warrants of this fervice remain in the hands of the writer to the fignet, who is clerk to the fervice, and by him the retour is made out; which differs from the style of the retour already given, in the following particulars.

# Retour of a Service before the Macers.

HÆC INQUISITIO facta fuit in nova sessionis domo Edinburgi, die mensis, anno, coram et, duobus ex quatuor clavigeris ordinariis coram Dominis Concilii et Sessionis, vicecomitibus in hac parte vicecomitatuum de et, specialiter constitut. per commissionem sub testimonio sigilli per unionis tractatum custodiend. et in Scotia vicecomitatum custodiend.

ce et loco magni figilli ejusd. utend. ordinat., de data die mensis . anno loco et tempore vacantiæ dispensan. Per hos pro-BOS ET FIDELES PATRIÆ HOMINES, viz. (here take in the names)—QUI JURATI DICUNT, magno facramento interveniente, quod quond. A, pater B, latoris præsentium, obiit ultimo vestit. et sast. ut de feodo, ad fidem et pacem S. D. N. Regis, in TOTIS et INTEGRIS (here take in the lands as in the claim)-ET QUOD dict. B est legitimus et propinquior hæres dict. quond. A, sui patris, in dict. terris aliifque, jacent et bondat. ut supra; ET QUOD est legitimæ ætatis; ET QUOD prædict. terræ cum pertinentibus valent nunc per annum (here the holding must be inserted as proved in the service)— ET QUOD prædict. terræ, decimæ aliaque prædict. cum pertinen. immediate tenentur de S. D. N. Rege, ejusque successoribus (here the holding and reddendo will be inserted)-ET QUOD dict. terræ aliaque prædict, nunc existunt et exstitere in manibus S. D. N. Regis ejusque prædecessorum, tanquam immediatorum legitimorum fuperiorum eorundem, a decessu quondam A, patris B, qui deceffit—(here the period of the death as proved)—et fic pro spatio (here the period of the nonentry will be stated; or, if the lands have been liferented, which will save them from nonentry, say) ' Et quod dict. terræ, decimæ aliaque prædict, existunt prout exstitere in manibus usufructuariæ, virtute ejus infeodationis fub magno figillo,' &c. (If the lands

lands have been adjudged and the creditor has obtained a charter of adjudication, you will say) . In virtute cartæ adjudicationis manibus fub magno figillo, &c. (but, on the supposition that the lands have been in non-entry, after specifying the period of the non-entry, you proceed) ratione dict. B, proximi et legitimi hæredis dict. A, jus eius legale adhuc non profecuti. In cutus REI TESTIMONIUM, figillo quorundem corum qui dict. inquisitioni intererunt, una cum brevibus Regis intus clausis et sigilla dict. clavigerorum tanquam vicecomitum antedict. funt appenfa, una cum subscriptione manuali magistri R, signeti nostri clerici et notarii publici ac deservitionis dict. brevium curiæ clerici. Apud Edinburgum. die mensis, &c.

Præmissa supra hac et præceden. paginis scripta, vera esse attestor ego dict. R. (Signed) R, N. P, et C. D.

#### ADVOCATION OF BRIEVES.

When brieves have been taken out, they may be advocated to the macers by a bill of advocation prefented to the court at the inftance of any competitor. The grounds of fuch an application must depend upon circumstances; and to give an example of the bill of advocation

tion would be little to the purpose. It is addressed to the Lords of Council and Session, in the ordinary form of bills of advocation; and it prays to have the brief in question, which has been directed to an inferior Judge, advocated from that Judge, and remitted to the macers as sheriss in that part, and that some of their Lordships number may be appointed as assessing to the said macers, with power to cognosce and decide therein. This bill, when passed, is the warrant of letters of advocation.

# Letters of Advocation of a Brief for serving an Heir,

GEORGE, &c. WHEREAS it is humbly meant and shown to us by OUR LOVITE (Here the bill will be taken in as the narrative of the letters; altering it to the third person in place of the first). And THEREFORE the said sheriff and all other inferior Judges and their deputes, ought to be discharged from all further proceeding or cognoscing therein in time coming.

OUR WILL IS HEREFORE, that ye lawfully fummon, warn, and charge the faid B, raifer and procurer of the faid brieves, and the faid sheriff

to whom directed, and his substitutes and clerks of Court, personally, or at their respective dwelling places, TO COMPEAR before our faid Lords of Council and Session, and their macers, the next to come, in the hour day of of cause, with continuation of days, bringing with them the faid brieves, with the executions thereof, and grounds and warrants whereupon the fame proceeded, to be feen and confidered by the faid Lords and macers: and to hear and fee the same advocated from the said sheriff and his substitutes, and all other inferior Judges within this kingdom, to our faid macers, as the only Judges competent to cognosce therein, for the reasons foresaid: Moreover, we, and our said Lords in our name, have advocated, and hereby advocate the foresaid brieves from the said sheriff-depute of and his substitutes, and from all

other inferior Judges within this realm, to our faid macers, or to any two of them conjunctly, as sheriffs in that part of the faid sheriffdom, and as the only Judges competent and unsuspect thereto; discharging hereby the faid sheriff and his substitute, and all other inferior Judges within this kingdom, from further proceeding, cognoscing, or giving any determination as to the faid briefs, and of their offices in that part, in the mean time, while the day of the said month of

, that the verity be known, for the rea-

fons

fons and causes foresaid: According to Justice, as ye shall answer to us thereupon; which to do we commit to you, jointly and severally, our full power by these our letters, delivering them by you, duly executed and indorsed, again to the bearer. Given under our signet, at Edinburgh, the day of , and year of our reign.

Ex Deliberatione Dominorum, &c. Signed by a Writer to the Signet.

SECT. III. OF THE SERVICE cum beneficio inventarii.

THE fervice cum beneficio inventarii is meant to fecure the heir against the claims of creditors to any greater extent than the value of the e-state given up in the inventory. It is a remedy provided by statute, \* and is intended for enabling

#### \* Act 1695, Cap. 24.

This act is entitled, "Act for preventing the Frauds of Apparent Heirs." The first part relates to that subject; the last part to the service cum beneficio inventarii. It is in these terms, "And moreover, his Majesty, with the advice and consent foresaid, statutes and ordains, that for hereafter any apparent heir shall have free liberty and access to enter to his predecessors cum beneficio inventarii, or upon inventory, as use is, in executries and moveables, allowing still to the apparent heir, year and day to deliberate, in which time he may make up the said inventory, which he is to give up upon oath, full and particular, as to all lands, houses, annualrents, or other heritable rights whatsoever,

bling an heir to do justice to the creditors of the ancestor, without incurring any risk, or any other

to which the said apparent heir may or pretend to succeed; which inventory, to be subscribed by him before witnesses duly insert and designed, shall be given in to the clerk to the Sheriff-court of the shire where the defunct's lands and heritages lye; or, in case the defunct had no lands or heritages requiring sasine, to the clerk of the shire where the defunct deceased; to which inventory the sheriff or sheriff-depute, with the clerk of the Court, shall also subscribe in judgement, and record the same in their registers, and give extracts thereof; for all which the upgiver of the said inventory shall pay no more to the Court and clerk thereof, on any account, than the ordinary price of extracts in that Court for an extract of the said inventory; and this inventory is to be given in, recorded and extracted, as said is, within the said year and day, to deliberate; AND thereafter the foresaid extract thereof shall, within forty days after the expiration of the said year and day, be again presented and registered in the books of Council and Session, in a particular register, to be appointed by the clerk register for that effect; and the apparent heir entering by inventory, in manner foresaid, is hereby declared to be only liable to his predecessor's debts and deeds, secundum vires inventarii, and in as far as the value of the heritage given up in inventory will extend, and no further: Providing always, &c. that if the aforesaid apparent heir shall have any intromission with the defunct's heritable estate, or any part thereof, otherwise than necessary intromission for custody and preservation, before his giving in, recording snd extracting the said inventory, in manner foresaid; or if he shall fraudfully omit any thing out of the said inventory, that is, which yet he shall be found to have intromitted with or possessed; then, and in either of these cases, he shall lose the benefit of the inventory, and be universally liable as if entered heir without inventory: AND FURTHER, that if any part of the said heritable estate shall be without fraud omitted to be given up by him in the foresaid inventory, and shall not, in the mean time, be affected by the diligence of a lawful creditor, he shall have liberty, so soon as he comes to other responsibility than what is implied in the fair and proper distribution of the estate. The changes on the claim of service, on the verdict, and on the retour, are exceedingly trisling; they consist merely in adding the words "cum beneficio inventarii" to the character of heir taken in the claim and relative deeds: In every other respect, the proceedings, in this, and in any other service, correspond.

The material alteration then consists in that plan of security which the act has laid down for ascertaining the extent of the property to which the heir completes his title, and which consists in preparing and recording, under certain regulations, an inventory of the estate. I shall therefore give the form of the inventory, with the necessary directions for putting it on record.

INVEN-

the knowledge thereof, and within forty days thereafter, to make an eik of the same to the said inventory; which eik is to be made and subscribed, given in and recorded, in the same manner with the principal inventory above-mentioned: And LASTLY, it is hereby declared, that apparent heirs, if they please, may enter without inventory, as formerly, in all points; and that, whether they enter with or without inventory, they are still to enter by service and retour, or by precept of clare sonstat, in manner formerly accustomed.

INVENTORY of the Heritable Estate which belonged to the deceased A lying in the parish of and shire of, who died upon the day of last, faithfully made up and given in by B, eldest lawful son and apparent heir of the said A, in terms of the act 1695, c. 24, anent apparent heirs entering to their predecessors cum beneficio inventarii.

The faid A, at the time of his death, was possessed of the lands and others underwritten, viz. of ALL and whole—(here they will be described as in the title deeds)—But the said B hereby declares; 1mo, That he shall, in accounting, have allowance of all charges and expenses the shall disburse and lay out in making up titles to the storesaid subjects; 2dly, That it shall be lawful for him to add to this inventory any other heritable estate to which he may succeed, or which may hereafter come to his knowledge, in terms of the act of Parliament: \* AND to the effect the said inventory may be published and made known to all



<sup>\*</sup>Where the inventory is given up by tutors, it will be proper to add another declaration to this effect:—" AND " LASTLY, That as the said tutors are, by the nomination granted by the said deceased A, by which they are ap- pointed tutors to the said B, declared to be liable for: " their actual intromissions respectively, and not in solidum, so their giving up this inventory shall in nowise be construed to subject them in any other manner than in terms of the said nomination, and not in solidum, but only each for his actual intromissions, and no further."

all concerned, the faid B CONSENTS to the registration hereof in the books of Council and Session, or others competent, and in the manner directed by the said act of Parliament; and thereto CONSTITUTES

, his procurators, &c. In wit-

#### PROCEEDINGS.

The inventory is figned in the fame form and manner with any legal deed: A copy will be prepared for each county, where the estate lies in separate counties; and after these copies have been duly executed, the heir appears in presence of the Judge Ordinary, or of a Justice of the Peace, and gives his oath in the following terms. The oath is written on the bottom of the inventory.

# Oath by the Heir.

AT , the day of .

IN PRESENCE OF , one of his Majesty's Justices of the Peace for the county of , (or whatever description of Judge it may be), compensed the within named B, who produced this inventory; and being solemnly vol. v. \* N n sworn

fworn and interrogated, depones, THAT to the best of the deponent's knowledge, the within is a just and true inventory of the lands and heritages which belonged to the deceased A my father; AND THIS IS TRUTH, as I shall ANSWER TO God.

Signed by B and by the Judge.

The next step is to record the inventory and oath before the Sheriss, which, by the act, must be done within the year and day from the death of the ancestor. This is done by presenting the inventory in Court.—The Judge signs an order for recording the inventory and eath; the principal is preserved amongst the records of Court; and an extract is given out in the form of an act of Court.

AT , the day of .

Which day, Mr , fheriff-substitute of the sheriffdom of , sitting in judgment, by his decree and sentence pronounced by him, of the date hereof, decerned and ordained, and hereby decernes and ordains the inventory underwritten, of the heritable estate which belonged to the deceased A, and which was made and given up by B, his eldest lawful son and apparent heir, with the oath of the said B subjoined to the said inventory, produced in Court by

, procurator for the faid B, to be inferted and registered in the court books of the faid sherissdom, to the effect, and conform to the act of Parliament after mentioned; or which inventory, and oath thereon, the tenor follows, viz.—(here the inventory and oath are taken in)—

Extracted upon this, and the preceding pages, by

Signed by the Clerk of Court.

#### PROCEEDINGS.

The next step is, to record the inventory in the books of Session. You give in the extract from the Sheriss-court to the keeper of this new register, who is appointed by the Clerks of Session. He keeps the extract of the Sheriss as his warrant; and, under authority of the act, gives out a new extract, attested by the Clerks of Session. The material thing to be attended to is, that this last registration shall, in terms of the act, take place within the forty days after the expiry of the annus deliberandi; for, unless the inventory has been recorded in the Sheriss-court within the year, and in the Court of Session within the forty days thereafter, the benefit of the act is lost. Where, on the or

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ther hand, these have been complied with, the service may take place at any future time.

# Sect. IV. OF THE PRECEPT OF CLARE CONSTAT.

THE precept of clare constat and infestment preserves evidence of the nature of our ancient feudal rights. Formerly, the heir of a vaffal was acknowledged in presence of the pares curiæ; and an order was given by the superior to his baillie, to give him possession of the property of his ancestor. All this was done without writing, and the evidence of it entrusted to the pares curiæ alone. The next step, we learn from Craig (Lib. 2. dieg. 2. § 16. & 17.), was to have recourse to the breve testatum, or written charter of the fuperior, attesting the fact, and corroborated by the subscriptions of the pares curiæ. This, again, we learn, was fuperfeded by other forms; and an order, or precept of fasine was given by the superior to his baillie, on which possession was given to the vassal, and evidence of that act preserved, by a notorial instrument. In this manner, we have evidence of the union of modern and ancient

cient forms in those which we are at present to consider.

These forms are perfectly consistent with the opinions entertained by the seudalists. The property, on the death of the vassal, was understood to fall back into the hands of the superior, as the proprietor of the seu, excluded only by the right of the vassal. But whatever power the superior might have possessed in very early times, that power came to be ascertained and bounded by our practice, and, at present, is as sixed and certain, and as completely subservient to the rights of the vassal, as if the idea of a right of property in the superior had never existed.

The notion of an original right of property in the superior, is, however, made the ground of certain procedure for the benefit of the vasfal, or for attaining the ends of justice; but, beyond these, the idea of a right of property in the superior is not to be traced. Thus, to give a right to an adjudging creditor, or to complete the title of a purchaser in a judicial sale, the Legislature has called forward the superior to give his aid in attaching the property of the vassal. But, on the other hand, no act of the superior, even with the consent of the vassal,

shown in any other way than by those forms which the law has fanctioned, can affect the property of the vassal. Thus, a superior may receive a resignation ad remanentiam, or in favorem; or he may confirm a disposition and saline given by his vassal to be held of him; but, without the united acts of the superior and vassal in one or other of these acknowledged and received forms, the superior cannot affect the property of his vassal; and, on the death of the vassal, the power of the superior is restricted to that of renewing the right in favour of the heir of investiture alone.

The rule, that it is the heir of investiture who alone is entitled to a renewal of the right from the superior, by the precept of clare conflat, is a safe one for the practitioner. He will thus neither renew the right to the heir at law as such, contrary to the terms of the destination of the seudal right, nor even to the proper heir in the seu will he give a 'right to him in liferent, and to his son in see.' In short, it will be perfectly understood, that, on the death of the vassal, the only power possessed by the superior, is to carry on the right one single step in the precise direction pointed out by the investiture;

restiture; and where the superior has no knowledge of the person who by the investiture is entitled to succeed, he must be pointed out to him by a service.

This renewal of the right of the ancestor in the person of the heir, will be voluntary; or it may be forced from the superior. And I shall therefore give, first, the form of the precept of clare constat and infestment; and, second, the forms by which the superior may be forced to give infestment to his vasial.

### I. OF THE FORM OF THE PRECEPT OF CLARA CONSTAT AND INFERTMENT.

The form of the precept of tlare constaturequires attention from the conveyancer, principally in the description of the heir, which ought to be as accurately given as in the special service; though, no doubt, it often happens, from the narrative of the title-deeds given in the precept, and from the heir's being served in subjects specially described, that an inaccuracy in describing the character of the heir is supplied by a presumed reference to the destination in his titles; but to this we ought not to trust. I shall give an example of the N n 4 precept precept of clare constat in its ordinary form, with a few remarks, to include most of the cafes likely to occur. And for the precept in favour of an heir of entail, I must refer to the forms already given in this volume, 'Of Completing the Title of the Heir of Entail;' and those in favour of an heritable creditor will be found very fully given under the title, 'Of the Renewal of the Heritable Bond in the Heir of the Creditor,' vol. II.

# Precept of Clare Constat.

A, immediate lawful superior of the lands and others underwritten, to

and each of you, jointly and severally, my baillies in that part, specially constituted, Greeting; BECAUSE, by authentic instruments and documents read and considered by me, and others in my name, IT CLEARLY APPEARS, and is made known to me, that the deceased B, grandfather to my LOVITE C, bearer hereof, died last vested and seised, as of see, at the faith and peace of our Sovereign Lord the King, in ALL and WHOLE—(here the lands are described, agreeably to a charter, &c.—The narrating the investiture secures the deed against objections, as the finding the heir to be heir in lands, the destina-

tion of which is expressed, is much more secure. than where the investiture has not been narrated)-AND THAT the faid C is nearest and lawful heir. to the deceased B his grandfather, in the said and others foresaid, lands of with the pertinents; AND THAT he is of lawful age; and that the faid lands and others foresaid, are held of me as immediate lawful superior thereof, in feu farm, fee and heritage for ever, for the yearly payment to me, my heirs and fuccessors: of the sum of in name of feu duty, at the two terms of Whitfunday and Martinmas, by equal portions; As ALSO, DOUBLING the faid feu duty at the entry of each heir in the faid lands the first year of their entry, as use is in feu holding-(it is obvious, that this part of the deed must be entirely regulated, both in regard to the holding and duties, by the title deeds; sometimes they are expressed generally, and a reference made to the little deeds, but it is much better to express them fully, agreeably to the title deeds of the estate) - AND THESE for all other burden, demand, or fecular fervices whatever, which can be anyways exacted or required furth of the faid lands and others; THERE-FORE it is my WILL, and I DESIRE and REQUIRE you, and each of you, jointly and severally, my bailies in that part foresaid, THAT, upon sight hereof, ye pass to the grounds of the said lands, and there give heritable state and fasine, actual, real, and corporal possession of all and whole the lands

and others foresaid, lying and described in manner above written, to the said C, as nearest and lawful heir to the said B his grandfather, in the faid lands and others, agreeably to the titles and investitures thereof, produced to me, and read and confidered by me as aforesaid; AND THAT by delivering to him, or to his certain attorney in his name, bearer hereof, of earth and stone of the ground of the faid lands, and all other symbols usual and necessary; TO BE HELD of me and my foresaids, in MANNER, and for PAYMENT of the feu duties, and other duties and fervices before specified; AND this in noways ye leave undone; which to Do. I hereby commit to you, and each of you, my baillies in that part foresaid, my full power, by this my precept of fasine directed to you for that effect; saving and RESERVING always my own rights, and the rights of all others, as accords of law; AND I CONSENT to the REGISTRATION hercof in the books of Council and Session, as alone competent, therein to remain for prefervation; and, for that purpole, con-STITUTE

MY PROCURATORS, &c. IN WITNESS WHERE. **OF**, &c.

I shall next take notice of such alterations as are most likely to occur.

## Where the Precept is granted by Commissioners.

A. B. and C. commissioners appointed by the Right Honourable A Earl of E, immediate lawful superior of the lands and others under written, for entering and receiving vassals in all lands and heritable subjects held of him the said Earl, whether heirs or fingular fuccessors, on payment of fuch compositions as we may think reasonable. and having power to make, grant and subscribe, in their favour, charters, with the necessary precepts of fasine, as also precepts of clare constat. and all other writings, and to infert in the faid writings, all the requifite claufes, agreeably to a commission granted by the said A Earl of E to us, or any two or more of us, accepting and acting, who are thereby appointed a quorum, and recorded in the books of dated Council and Session, on the day of to and each of you, &c.—(the precept runs in name of the commissioners, and does not, in any other respect, differ from the common case.)

Where the Precept is granted by a Wife with consent of her Husband.

I, B, spoule of A, and immediate lawful superior of the lands and others after specified, with

the special advice and consent of the said A my husband, and I, the said A, for myself, and for all right and interest which I have in the said lands and estate, To

and each of you, jointly and severally, our bailies, &c.—(you will express the holding to be of the wife, and the feu duties to be payable to her and her heirs, and those deriving right from her; and when you come to the precept say)—Therefore we the said A and B spouses, for our respective rights and interests foresaid, and with mutual advice and consent, no hereby desire and require, &c.

## Where the Precept is granted by Tutors.

We, A, B, and C, tutors appointed to B<sub>s</sub> immediate lawful superior of the lands and others under written, by a nomination of tutors in our favour contained in a disposition of the said lands and estate and others, in favour of the said lands and estate, of date and recorded, by which nomination, the majority of us alive at the time, and accepting, are declared to be a quorum, To

and each of you, bailies in that part, specially constituted, greeting; because, &c.—the lands will be declared to be held of B, and the feu duties payable to B, his heirs and successors; the rest will proceed in common form.

Where

Where the Precept is granted by a Minor, with consent of Curators, in favour of Heirs Portioners.

I, A, immediate lawful superior of the lands and others under written, with consent of B, C, and D, curators appointed to me by A, my father, by nomination of tutors and curators contained in a disposition of his lands and estate, of date and recorded, any two of whom, alive and accepting, are declared to be a quorum; to

and each of you, jointly and feverally, my baillies in that part, specially consti-TUTED, greeting; BECAUSE, by authentic instruments and documents laid before us, and fully read and confidered by me and my faid curators, IT CLEARLY appears, and is made known to me, that E, father of my lovites F, G and H, died last vested and seised in the see of ALL and WHOLE &c.: AND THAT the faid F, G and H, bearers hereof, are the only children of the deceased E, and so nearest and lawful heirs portioners to their faid father in the lands before described, with their pertinents; AND THAT the same are HELD of and under me the faid A, &c .- (the deed goes on in common form; and when you come to the precept, say)—THEREFORE I, with consent forefaid, Do hereby desire and require you, that, on fight hereof, ye give and DELIVER heritable state and fasine,

fasine, actual, real and corporal possession to the faid F, G and H, bearers hereof, as heirs portioners of the said E, their father, in the said lands and others foresaid, in terms of the titles foresaid; AND THAT by delivery to the said F, G and H, as heirs portioners foresaid, or to their certain attorney or attornies, &c. (in common form.)

## Where the Heir has made up a Title by Service:

After describing the lands, in place of saying, as in the common case, "AND THAT the faid C is mearest and lawful heir," &c. you proceed in these terms—"AND THAT the said C is eldest son, and nearest and lawful heir to the said B, his father, in the said lands and others, with their pertinents, agreeably to the special service in his favour, as heir foresaid, expede before the Sherist of upon the day of duly retoured to Chancery."

It may be necessary, in completing the title of the heir, to unite the precept of clare conflat with the charter of confirmation. For inflance, the ancestor may have purchased, and
been instalt on the precept in the seller's disposition; and, consequently, to enable the superior to give an entry to the heir of that pur-

chafer, it becomes necessary, in the first place, to confirm the purchaser's infeftment following on the feller's precept, so as to make the anceltor hold of the superior; and then the superior gives his order for entering the heir as heir to the ancestor thus made to hold of the The necessity of the union will be function. The fame thing happens, in whatobvious. ever way the ancestor may have been base infeft. Suppose him to have been base infest on a marriage contract, that is to fay, his father stands infest, Holding of the superior on a marriage contract, he gives a precept of infestment, with an obligation to infest a se vel de se, and the son is infest on that precept. and dies. It is necessary, before giving a precept of clarz conflat to the fon of the marriage, to confirm the infeftment on the marriage contract; of which the following style gives an example.

Charter of Confirmation and Precept of Clare Constat.

To ALL AND SUNDRY to whose knowledge these presents shall come; A, immediate lawful superior of the lands and others under written, GREETING; KNOW YE, that I have RATIFIED and

and APPROVED, and PERPETUALLY confirmed a DISPOSITION, bearing date made and granted by B, who stood publickly infeft under me in the lands and others after mentioned, whereby, in implement of the contract of marriage therein mentioned, he GAVE, GRANTED, and DISPONED to C, his eldest lawful son, and D, his spouse, and the longest liver of them two, in conjunct fee and liferent, and the heirs male lawfully procreated, or to be procreated betwixt them; WHICH FAIL-ING, to the faid C, his heirs and affignees whomfoever, heritably and irredeemably, ALL AND WHOLE—(here insert the lands)—as the faid dispofition, containing an obligation to infeft the faid disponees a se vel de se, in manner therein specified, with precept of fafine, and feveral other clauses, in itself more fully bears; TOGETHER ALso with an instrument of sasine following thereon in favour of the said C, and D his spouse, under the hands of notary public, dated and recorded , or of whatever other dates, tenor or contents the faid writings may be, IN the WHOLE HEADS, ARTICLES, CLAUSES, TENOR and CONTENTS of the same. with all that has or is competent to follow thereon: AND FURTHER, I hereby will and GRANT, and

CLAUSES, TENOR and CONTENTS of the same, with all that has or is competent to follow thereon; AND FURTHER, I hereby WILL and GRANT, and for myself, and my heirs and successors, DECERN and ORDAIN, that this present confirmation shall be as valid and effectual, to all intents and purposes, as if the writs before confirmed had been engrossed herein,

herein, or as if this confirmation had been made before the taking of the faid infeftment; WHERE-WITH, and with all objections that may lye against the validity of the faid deeds, or of this confirmation, I, for myfelf and my foresaids, have for ever DISPENSED: AND FURTHER, BECAUSE IT CLEAR LY APPEARS, and is made known to me, that the faid deceased C, father to MY LOVITE E, bearer: hereof, died last vested and seised as of see, at the faith and peace of our Sovereign Lord the King, in all and whole the faid lands of others forefaid, with their pertinents; AND THAT the faid E is nearest and lawful heir male of the faid marriage entered into betwixt the faid C and D, and, as fuch, in terms of the writs hereby confirmed, is nearest and lawful heir to the said C, his father, in the faid lands and others foresaid; AND THAT the faid lands and others foresaid are held of me, &c.—(in common form.)—THERE-FORE, it is my WILL, and I hereby DESIRE and REQUIRE YOU

and each of you, my baillies in that part, to the effect after specified, specially constituted, THAT, on sight hereof; ye pass to the ground of the said lands and others, and there give and Deliver to the said E, as heir foresaid, heritable state and safine, &c. (in common form.)

VOL. V.

Oo

Precept

Precept of Clare Constat by the Superior for infefting himself in the property of Lands, of which he is inseft in the Superiority.

B, immediate lawful superior of the lands and others underwritten, to

and each of you, jointly and feverally, my bailies in that part specially constituted, greeting: BECAUSE PT CLEARLY AP-PEARS, and is MADE KNOWN to me, by authentic instruments and documents read and considered by me, that the deceased A, my father, died last vest and seised as of see, at the faith and peace of our Sovereign Lord the King, in the property of ALL and whole, &c. AND THAT I am nearest and lawful heir to the deceased A, my father, in the lands and others forefaid, in virtue of the investitures thereof; AND THAT I am of lawful age: AND THAT the faid lands and others are held of me, as immediate lawful superior thereof, in free blench farm, fee, and heritage, &c.; THEREFORE, I hereby desire and require you, and each of you, jointly and feverally, my baikes in that part forefaid, that, on fight hereof, ye pass to the grounds of the faid lands, and there give to me, as heir foresaid, heritable state and sasine, actual, real and corporal possession of the said lands and others foresaid, and that by delivery to me or my attorney in my name, bearer hereof, of earth and stone of the ground of the said lands, and all other symbols usual and necessary; AND this in noways ye leave undone; which to do, I commit to you, jointly and feverally, my bailies in that part, full power, by this my precept of fafine directed to you for that effect; AND I CONSENT to the registration hereof. &c.

The infeftment following on this precept will complete the fuperior's title to the property; but the two estates of property and fuperiority will fland separated, until, by a refignation of the property ad remanentiam, it be united with the superiority in his person. This has fometimes been done by a kind of union of the precept of clare conflat and refignation ad remanentiam. But the fafest form is by feparating the two afts. The form of the refignation follows:

Procuretory of Resignation ad remanentiam by a Person vested both in the Property and Superiority of Lands.

I, B, CONSIDERING that I stand vested in the property and superiority of the lands and others after mentioned, on different titles, and that I am defirous of uniting and confolidating the property with the superiority in my person, do there, fore hereby constitute and ordain

> jointly and feverally,

feverally, my procurators, for me, and in my name, to COMPEAR before me, my heirs and fuccessors, as immediate lawful superiors of the lands and others herein described, or before our commissioners in our name, having power to receive refignations thereof ad remanentiam, at any hour and place lawful; and there, purely and simply, by staff and baton, as use is, to resign, as I by these presents resign and surrender, simpliciter UPGIVE, OVERGIVE and DELIVER, ALL and WHOLE &c., with all right, title and interest which I have or can pretend to the property of the same, in THE HANDS of me the faid B, or of my foresaids, as immediate lawful superiors of the same, ad perpetuam remanentiam; TO THE EFFECT that the right of property of the faid lands and others, which stand in my person, may be united and consolidated with my right of superiority of the fame, and remain with me, and my heirs and fuccessors in the faid superiority, absolutely and irredeemably, in all time coming; ACTS, INSTRU-MENTS and DOCUMENTS in the premises to alk and take; and generally every other thing to do, as freely in all respects, as I the said B could do myself, or which to the office of procuratory in fuch cases is known to pertain; PROMISING to 72' tify and confirm whatever my faid procurators shall lawfully do, or cause to be done in the premifes; AND I CONSENT to the REGISTRATION hereof in the books of Council and Seffion, or others

others competent, therein to remain for preservation; and, for that purpose, CONSTITUTE

MY PROCURATORS, &c.

In witness whereof, &c.

Instrument of Resignation ad remanentiam following on the preceding Procuratory.

In the name of God, amen. Be it known to all men by this public instrument, THAT upon years, and of the reign day of of our Sovereign Lord George the Third, by the grace of God, of the United Kingdom of Great Britain and Ireland, King, defender of the faith, year, in presence of me notary public and witnesses subscribing, compeared personally L, as procurator for B, heritable proprietor of the lands and others after mentioned, specially constituted by virtue of a procuratory of resignation ad remanentiam, dated made and granted by the faid B, for refigning the faid lands and others after mentioned, in favour of himself, his heirs and fucceffors in the fuperiority, AND PASSED with us to the personal presence of the faid B, SUPERIOR of the faid lands and others; AND there, the faid procurator, in name and behalf of the faid B, RESIGNED and SURRENDERED, simpliciter upgave, overgave and delivered, ALL and WHOLE (here describe the lands,) together Oo3with

with all right, title, and interest, which the said B had, or anyways might have, claim, or pretend to the property of the faid lands and others, or to any part thereof, in the HANDS and in FAVour of the faid B immediate lawful superior of the fame, ad perpetuam remanentiam; to the effect that the right of property of the faid lands, standing in the person of the said B, may be confolidated with the right of superiority of the same, and remain with the faid B, his heirs and succession fors in the faid superiority, absolutely and irredeemably, in all time coming, by virtue of, and conform to, the foresaid procuratory of resignation granted by the said B for that effect; and that by deliverance made by the faid procurator of staff and baton, as use is, in the hands of the faid B, who accepted the same; WHEREUPON, and upon ALL and SUNDRY the premisses, the faid attorney, as procurator foresaid, asked and took instruments in the hands of me netary-public: THESE THINGS were fo done at day, month, year of God, and of the King's reign respectively, first above written, betwixt the hours in presence of of and witnesses to the premisses specially called and required.

This inftrument must be recorded within fixty days of its date, and it cosolidates the property

property and superiority in the person of the superior.

# Sasine on the Precept of Clare Constat.

It will be observed, that the precept of clare constat can neither be assigned nor executed after the death of the grantor: It cannot be assigned, because the character under which the right is given is unassignable; while the act 1693, c. 35, which authorises precepts to be executed after the death of the grantor or receiver, makes an exception of precepts of clare constat: The words are, 'Excepting always' from this act precepts of clare constat.' The sasine therefore following on this precept can be in favour of the heir only to whom the precept is given.

## Instrument of Sasine on a Precept of Clare Constat.

IN THE NAME OF GOD, AMEN. BE IT KNOWN TO ALL MEN by this present public instrument, THAT upon the day of in the year of our Lord and in the reign of our Sovereign Lord George the Third, by the grace of God, of the united kingdom of Great Britain and Ireland, O o 4 King,

King, defender of the faith, the year, IN PRESENCE of me notary-public, and witnesses subfcribing, APPEARED perfonally

as procurator for, and in name of C, whose power of procuratory was fufficiently known to me the faid notary-public, AND PASSED with us, and

bailie in that part, specially constituted, by virtue of the precept of fasine or precept of clare constat after inferted, to the ground of the lands and others after mentioned, respectively and fuccessively, HAVING and HOLDING in his hands the precept of fasine, or precept of clare constat after inferted, made and granted by A, immediate lawful superior of the lands and others therein and after mentioned, to and in favour ofthe faid C, for infefting him as nearest and lawful heir to the deceased B his father, in the lands and others foresaid: WHICH PRECEPT of CLARE CONSTAT the faid procurator PRESENTED to the faid bailie, and defired him to proceed to the execution of the office of bailiary thereby com-. mitted to him, by giving fasine to the said C, of the faid lands and others, in terms of the faid precept of fafine or precept of clare constat; WHICH DESIRE, the faid bailie finding to be reafonable, he received the faid precept of clare constat into his hands, and delivered the same to me notary public subscribing, to be read and published to the witnesses and others present, which I did, and of which precept of fasine or clare constat

stat, the tenor follows, in these words—(here copy in the precept, from beginning to end, verbatim)— ARTER READING and PUBLISHING of which precept of sasine or clare constat above inserted, the faid bailie, by virtue thereof, and of his office of bailiary thereby committed to him, GAVE and DE-LIVERED to the faid C, heritable state and fasine, actual, real, and corporal possession of ALL and WHOLE the lands and others above mentioned. lying and described in manner foresaid, and that by delivery to the faid procurator of earth and stone of the ground of the said lands, and of all other usual and necessary symbols, after the form and tenor of the faid precept of fafine or clare constat above inferted, in all points; WHEREUPON. and upon ALL and SUNDRY the premisses, the said procurator asked and took instruments in the hands of me notary-public fubicribing: These THINGS were fo done on the ground of the faid lands, respectively and successively, betwixt the of the day, month, hours of and vear of God, and of the King's reign respectively first above written, before, and in presence of witnesses to the premisses, specially called and required, and hereto with me fubscribing.

Attested by the subscriptions of the notary and witness, and by the notorial docquet.

Instrument

Instrument of Sasine on the Precept of Clare Conflat, when joined to a Charter of Confirmation.

As in the preceding form, until you come to these words, HAVING and HOLDING in his hands a charter of confirmation granted by A, whereby he confirmed a disposition, bearing date made and granted by B in implement of a contract of marriage betwixt C his eldest son and D, to which charter of confirmation, there is subjoined the precept of clare constat after inserted, for infefting E as nearest and lawful heir male of the marriage entered into betwixt the faid C and D, and, as fuch, nearest and lawful heir to the said C his father, in the lands and others particularly after described; WHICH CHAR-TER of CONFIRMATION, and PRECEPT of CLARE CONSTAT, the faid procurator presented to the faid bailie, and defired him to proceed to the execution of the office of bailiary thereby committed to him, by giving fasine to the said E of the lands and others foresaid, in terms of the said precept of clare constat; which desire, the faid bailie finding to be reasonable, he received the faid charter of confirmation, with the precept of clare constat thereto subjoined, into his hands, and delivered the same to me notary-public, to be read and published to the witnesses and others present, which I did; and of which precept of fasine

fasine or clare constat subjoined to the said charter of confirmation, the tenor follows in these words—(here copy from the following words in the precept to the end verbatim)—AND FURTHER, BECAUSE it CLEARLY APPEARS, &c. (and so the instrument goes on as in the preceding example)—AFTER READING and PUBLISHING, &c.

2. OF THE FORMS BY WHICH THE SUPERIOR MAY BE FORCED TO GIVE AN ENTRY TO AN HEIR.

It is only the vaffal who, by a special service as heir in the lands, has proved his right to be insest, that can force the superior to give him insestment; and the act 20th Geo. II. c. 50, authorises an application to the Lord Ordinary on the bills for a warrant to charge the superior. The form of the bill will correspond with the narrative of the following letters; and the retour of the special service will be produced with them to the clerk of the bills as their warrant.

Horning against Superiors at the Instance of an Heir, in terms of the Act 20th Geo. II. c. 50.

GEORGE, &c. WHEREAS it is humbly meant and shown to us, by our Lovite B, fon of the deceased

deceased C, That upon the day of, he was duly and lawfully served and retoured heir in special to his father A, before the Sheriff of in ALL and WHOLE—(here describe

. , in ALL and WHOLE—(here describe the lands)-AND WHICH LANDS are held of A, for payment—(here take in the duties and services as in the retour)—conform to retour of his special service, extracted from the records in Chancery, as the same, shown to our Lords of Council and Session, hath testified; AND THAT, by act of Parliament, made in the 20th year of the reign of his late Majesty King George II, entitled, ' An act for taking away the tenure of wardholding in Scotland,' it is enacted, that from and after the 25th March 1748, it shall and may be lawful and competent for any person who shall be duly served and retoured heir to any of his predecessors, in any lands or heritages in Scotland, to apply to the Lord Ordinary on the Bills in the Court of Seffion for the time being, praying a warrant for letters of horning to charge the superior, of whom fuch lands or heritages are held, to receive or grant new infeftments to fuch heir; and, upon production to the faid Lords of our Council and Session, of a special retour of the petitioner, it shall and may be lawful for our faid Lords, and they are thereby authorised and required to grant warrant for letters of horning, upon fifteen days charge, to charge the superior of the lands contained in such special retour, to receive or grant

new

new infeftments to fuch heir. Our WILL IS HEREFORE, and we CHARGE you, that, on fight hereof, ye pass, and, in our name and authority, lawfully command and charge the faid A, personally, or at his dwellingplace, to ENTER, INFEFT and seise the complainer, in ALL and WHOLE the lands and others forefaid, lying and described in manner above written, AND to make, grant, fubfcribe and deliver, to the complainer, precepts, charters, and other writs requisite for that purpose, after the form and tenor of the complainer's special retour, as heir to his faid father, and act of Parliament before recited, in all points, WITHIN FIFTEEN DAYS next after he is charged by you thereto, under the pain of rebellion and putting him to the horn; wherein if he fail, the faid space being elapsed, that immediately thereafter ye denounce him our rebel, and put him to the horn, and use the whole order against him prescribed by ACCORDING TO JUSTICE, (because the Lords have feen an extract of the special service above mentioned), as ye will answer to us thereupon; which to do, we commit to you full power, by these our letters, delivering them by you, duly executed and indorfed, again to the bearer. Given under our fignet, at Edinburgh; the , in the day of year of our reign.

Ex deliberatione Dominorum Concilii.

### PROCEEDINGS.

When the charge upon these letters is disregarded, a caption may be raised, which will be the warrant of imprisonment, until the superior shall comply with the command of the preceding letters of horning; but this is an event that can scarcely be supposed to happen; for, either the superior will have good grounds for resuling to comply with the command of the letters; and, in that case, he will instantly present a suspension, and in that way the matter will be brought to issue; or, should the superior have no legal plea for refusing to give an entry to the heir of his vassal, he will never carry matters to such an extremity, but will comply with the command.

But another case may happen, and the superior himself may be unentered. In these circumstances, a different form of proceeding becomes necessary; and after requiring, under form of instrument, in presence of a notary and witnesses, the heir of the superior to enter and complete the title of the vassal, a special charge will next be given, of which the following is the style.

Special Charge at the Instance of a Vassal against his Superior, who has not made up Titles to the Superiority.

George, &c. Whereas it is humbly meant and shown to us, by our lovite B, that upon the day of , the complainer was duly and lawfully ferved heir in special to the deceafed B, his father, before the Sheriff depute of , in all and whole, &c.; which LANDS and others are HELD of A, his predecessors and authors, for payment, &c. conform to retour of his special service, extracted from the records of Chancery: And that the faid A, not having yet made up titles to the superiority of the said lands and others, the complainer DESIRED and REQUIRED him, under form of instrument, to make up and complete proper and fufficient titles thereto, and thereafter to enter and receive the complainer as vasial to him therein, and also offered to pay and perform to him what is required by law: AND THAT the faid A NOT ONLY ftill refuses to enter the complainer as his vasfal in the said lands as heir foresaid, BUT ALSO wilfully lyes furth. and will not obtain himself lawfully served, retoured, entered and infeft, in the superiority of the faid lands, as heir to the deceased his father, who died last vested and seised therein, whereby

whereby he may be in a capacity to enter the complainer in manner above mentioned; wherefore, necessary it is for the complainer to have these our letters directed at his instance against the said A, in manner and to the effect underwritten. WILL IS HEREFORE, and we CHARGE you, that, on fight hereof, ye pass, and, in our name and authority, lawfully command and charge the faid A, personally, or at his dwellingplace, to enter himself heir in special to the said deceased , his father, in ALL-and WHOLE the lands and others particularly before mentioned. wherein the faid died last vested and feifed, in manner forefaid, and thereby, or by other legal method, to obtain the full, heritable, irredeemable, and undoubted right thereof established in his person, and that WITHIN forty DAYS. conform to act of Parliament, to the effect above mentioned; with Certification to him, if he fail, the complainer shall have such action, process, and execution of adjudication, and others of the law competent, directed, led, used and executed, at his instance, against the faid A, as lawfully charged to enter heir in special as aforesaid, and against the said lands and others themselves, as he might have against him if he were ferved. retoured, entered and infeft therein, as heir in special to his said father, notwithstanding he wilfully lyes furth, and will not enter himself heir, in manner forefaid. According to justice, con-

form

form to act of Parliament, \* as ye will answer to us thereupon; which to do, we commit to you and each of you, full power, by these our letters, delivering them by you, duly executed and indorfed, again to the bearer. GIVEN under our Signet, AT EDINBURGH, the day of in the year of our reign.

Ex Delireratione Dominorum Concilii.

The act, which will be found in the foot note, feems to authorife the superior of the person delaying to enter, to give an entry to the subvassal, without the necessity of recurring to a judge. But a declaratory action, when the vaffal's immediate superior still delays, is the method followed out for obtaining the benefit of the act. The action is in this form.

Summons

The act here referred to, is the act 1474, c. 58, which runs in these terms: 'It is STATUTE and ORDAINED, anent overlords that, in defraud and skaith of their vassales and tenentes, defers to enter to their lands and superiorities : that in time to come the said overlords sall enter to their s lands and superiorities, and do their diligence thereto but fraud or guile, within forty days after that they be required be their vassales or tennentes. The which end if they do not, the saidis vassales or tennentes, incontinent thereafter, to be entered by the King or the overlord that the superiorities were holden of, and hould of him; and the other overlorde that fraudfully deffers his entry, to tyne the tennent for his lifetime, and assith the party of his coastes and skaithes that sall be susteined throw him in default of his entrie. VOL. V.

# Summons of Declarator of Tinsel of Superiority.

GEORGE, &c. WHEREAS it is humbly meant and shown to us by our Lovite B, that upon the , he was duly ferved day of heir in special before the sherist-depute of , to the deceased B his father, who died last vested and seised as of fee, in Att and WHOLE, &c.; the faid special service being duly retoured to Chancery; which faid lands and others were held, of before, of the deceafed to the deceafed for payment to him. &c. conform to feu charter. granted by dated . in favour of the faid B father to the pursuer; THAT A, eldest fon and apparent having refused to heir of the faid obtain himself entered and inseft as heir to his faid deceased father in the superiority of the said lands, by which means he is not in a capacity to receive the pursuer as vassal to him therein, the pursuer, in terms of the act 1474, c. 58, raised letters of special charge at his instance against the faid A, which are dated and figneted the day of last, and, by virtue thereof, messenger, pass on the caused day of the faid month, and charge the

faid A to obtain himself duly entered and infeft

in

in the superiority of the lands and others foresaid, belonging in property to the faid purfuer, fo that he might be in a capacity of entering him as vaffal therein, and that within 40 days after the faid charge, under the certification specified in the faid act of Parliament, as the faid letters of special charge and execution thereof more fully bears; AND ALTHOUGH the space of 4 odays is now elapsed; yet the faid A has not obeyed the faid charge, but still lyes out unentered and uninfest in the superiority of the forefaid lands and pertinents, to the pursuer's great hurt and prejudice; THERE-FORE it ought and should be FOUND and DECLARED by degree of the Lords of Council and Session, in terms of the foresaid act of Parliament, that the faid A has amitted and lost the right of superiority of the faid lands and pertinents, held of him and his predecessors, and wherein he might have procured himself entered and infeft as aforesaid. with the whole benefit and casualties of superiority before specified, and others that might have been payable out of the lands and others foresaid, and that during all the days of his lifetime; AND FURTHER, it ought and should be found and DECLARED, by decree forefaid, that it shall be lawful to and in the power of the pursuer, his heirs and fuccesfors, to obtain themselves infest in the faid lands and others, by the faid defender or his predecessors, their immediate lawful superiors of the faid lands and pertinents as after-mentioned;

Pp 2

and it being so found and declared, the pursuer and his foresaids ought and should be ordained, by decree foresaid, to be infest and seised in the said: , as follows; viz. In the faid lands of , with their pertinents, lylands of ing as aforefaid, by us and our royal successors as fuperiors to the defender and his faid deceased father therein, and that by precept or precepts directed furth of our chancery for that effect, or by any other habile method; and the director of our chancery and his deputies should be DECERNED and ORDAINED, by decree foresaid, to iffue precepts for infefting the purfuer and his foresaids therein, in manner before-mentioned, AND in the , with the pertinents faid lands of lying as aforefaid, by L, immediate lawful fuperior to the defender and his faid deceased father therein; and that letters of horning ought and should be decerned to be directed against the said L and his heirs and fuccessors, for that effect, on a charge of 21 days; To be HELD the faid lands and others, during all the days of the faid defender his lifetime, of us and our royal successors, and of the faid L his heirs and fuccessors, as the respective superiors to the said defender and his said deceased father therein, for payment of the feu-duties and others foresaid, as freely in all respects as if the same had been held of the said defender, had he obtained himself duly entered and infeft in the superiority thereof, as aforesaid; and the

the faid respective entries in the faid lands should be declared to be as valid and effectual to the purfuer and his forefaids, in all time coming, as if the faid defender had been entered and infeft in the fuperiority of the lands and others forefaid: and thereafter the pursuer entered and insest in the property thereof as his vadial; and our officers of state, for our interest, and the faid L for his interest, ought and should be called in this process; AND further, the faid A QUENT and SHOULD be DECERNED and ORDAINED, by decree forefaid, to make payment to the purfuer of the fum of as the expense of process and extracting the decreento follow hereon, conform to the faid act of Parliament, and laws and daily practice of Scotland, used and observed in the like cases, in all points. Our WILL IS HEREFORE, (in common form).

# SECT. V. OF THE TRUST BOND AND ADJUDICATION.

Trust Bond by an Apparent Heir, for the purpose of leading an Adjudication against the Estate of his Ancestor.

I, B, grant me to have instantly borrowed and received from C, the sum of 10,000l. Sterling, which sum of 10,000l. Sterling I bind and oblige P p 3 myself,

myfelf, my heirs, executors and fucceffors whomfoever, to repay to the faid C, his heirs, executors and affignees, at and against the term of Martinmas next, with 2000l. Sterling of liquidate penalty in case of failure, and the legal interest of the faid principal fum from the date hereof to the foresaid term of payment, and yearly, termly and continually thereafter, during the not-pay-- ment of the same; providing always and DE-CLARING, as it is hereby PROVIDED and DE-CLARED, that it shall not be lawful for the said C and his foresaids to use any execution upon this bond against me or my foresaids personally, or for attaching any moveable funds belonging, or which may at any future time belong, to me or my forefaids; AND I CONSENT to the REGISTRA-TION hereof in the books of Council and Session. or others competent, therein to remain for prefervation; and for that purpose constitute

MY PROCURA-

TORS, &c. In witness whereof, &c.

Back Bond by the Trustee, on receiving the foregoing Bond.

I, C, considering that B, by his bond of date
—(narrate the bond)—AND FURTHER CONSIDERING, that the foresaid bond was granted to me by B, without any

any value, in trust, for the special purpose of leading an adjudication, as truftee for him, against the lands and estate of which belonged to A his father: THEREFORE, I hereby BIND and OBLIGE me, my heirs and fuccessors, as soon as I shall have obtained the faid adjudication, to denude myself thereof, and of any other diligence in my person following on the said bond, to and in favour of the said B, his heirs or affiguees, and that whenever I am required so to do, and without any valuable confideration therefor, and that under the penalty of 2001. Sterling, over and above performance; PROVIDING ALWAYS, that the faid B shall be bound and obliged to reimburfe me of all charges and expenses to which I may be put in obtaining the foresaid adjudication, in completing my title to the faid lands, or in any other way in relation to the premisses, and of the expense of denuding in favour of the said B or his foresaids, in manner above written; AND I CONSENT to the REGISTRATION hereof in the books of Council and Seffion, or other Judges' books competent, that letters of horning on fix days' charge, and all other execution necessary, may pass on a decree to be interponed hereto, in common form; and for that purpose constitute . MY

PROCURATORS, &c. In witness, &c.

Pp 4 Proceen-

### PROCEEDINGS.

THE adjudication which follows on this trust bond has nothing peculiar; and the adjudger, when he has obtained his decree, proceeds to complete his title by a charter of adjudication and fasine. When the deeds, which it was the object of this title to challenge, are cleared off, the adjudger will reconvey to the truster.

This completes the subject of the heir's title in heritage; and I have now to explain the form of the title in moveables.

### CHAP. IL

OF THE FORMS BY WHICH THE TITLE OF THE HEIR IN MOVEABLES 18 COMPLETED.

THE office of executor is conferred by the decree of a commissary. The executor appointed by the deceased is preferred in the first place; or, where there is no executor but a general disponee named, he is preferred to the office; and, where there is no nomination, it is given

given to the nearest of kin; or, if no appearance be made for them, to the widow; and, failing all of them, to the creditors of the deceased.

The title in favour of executors-creditors will be taken up when we come to the subject of diligence; therefore, at present, we are to consider the executor's title, in so far only as it is necessary for distributing the moveable estate amongst the heirs or legatees of the deceased; and in this view, the title of the executor dative is first to be noticed, as it contains the procedure that takes place before the commissary, more fully than the confirmation of the executor nominate.

### Executor-Dative.

The title of the executor-dative confifts of two acts; first, he must be decerned executor; and then he must find caution for his intromissions, and be authorised by the commissary to intromit with the effects of the deceased. It is the union of these two which is termed confirmation, which completes the title of the executor, and makes his right in the executry transmit to his heir. When the proceedings have

have gone no further than to the act of decerning him executor, he can neither force payment from creditors, nor does any right, in the event of his death, (previous to confirmation), transmit to his executors.

The procedure in the confirmation of an executor dative, must take place before the commissary of the territory where the deceased had his principal domicil; or, if he shall have died in a foreign country, to which he had gone with an intention of remaining, the procedure must take place before the commissaries of Edinburgh. In the case also of a soldier, or of a person who has acquired no domicil, it is before the commissaries of Edinburgh that the procedure must take place.

The first step is to take out an edict, which is executed on a Sunday, against all and sundry, at the church door of the parish in which the deceased had his domicil; or, if the deceased was abroad with an intention of remaining, then it must be executed at the market cross of Edinburgh, on Saturday, which was of old the market day, and on Sunday at the parish church door of St Giles's at Edinburgh. The edict is in this form,

#### Edict.

L M, N O, P Q and R S, Commissaries of Edinburgh, To

, executors hereof, jointly and feverally: We charge you, that ye lawfully summon, warn, and charge the executors, testamenters, spouse, bairns, and intromitters, with the goods and gear of umquhil A B, who deceased at , upon the day of , and all others having, or pre-

tending to have interest in the said matter, by open proclamation at the market cross of

, and parish kirk door of TO COMPEAR before us, on the

TO COMPEAR before us, on the day of
, in the hour of cause, TO ANSWER at the
instance of ; THAT is to SAY, to
hear and see executors dative decerned, given in,
admitted, and confirmed to the above named defunct, and in all and fundry goods, gear, debts,
sums of money, jewels, gold, silver, and others,
which any ways pertained to, or were addebted,
resting, and owing by the said defunct; or else
to allege, &c. with certification, &c. AccordING to JUSTICE. GIVEN at Edinburgh, the
day of 1799-

Nine days must intervene betwixt the date of citation on this edict, and the day on which

it may be called in court. When it is called, a procurator appears for the party claiming the office;—(the order in which the office is conferred has been already noticed.)—On the application of the procurator, the commissary, if there be no competition, decerns in favour of the claimant; if there be a competition, he prefers the claimants in the order abovementioned; and eight days are given to the person decerned executor, to find caution for his intromissions, and to confirm.

If, in place confirming, the executor wishes to have a title to pursue, an act is extracted on this part of the procedure, which confers on him the necessary title: But as the commissary must now confirm such inventory as the executor shall offer, and of course a small part of the debt, a mere warrant to pursue is seldom applied for.

When the confirmation proceeds, the first step after obtaining a decree dative, is to find caution, by a bond in the following terms:

## Bond of Caution for an Executor.

I, E F, do hereby BIND and OBLIGE myself, my heirs, executors, and successors, as cautioners and

and furety, acted in the commissary court books , THAT the fum of Sterling, contained in the testament dative of umquhil A B, wherein C B, son of the said A B, is the only executor dative, qua nearest in kin decenned, and to be confirmed to the faid defunct, shall be made free and furth-COMING, to all parties having interest therein, as law will; AND the faid C B becomes BOUND for the faid cautioner's RELIEF in the premisses; AND both parties subject themselves, their heirs and fuccessors, to the jurisdiction of the commissaries of. in this particular; AND appoint their clerk's office in as a Do-MICIL whereat they may be CITED to all the diets of court; HOLDING any citation legally left for us on the wall of the said office, to be as valid and fufficient as if we were personally summoned; CONSENTING to the REGISTRATION hereof in the faid commissary court books, that all execution necessary may pass hereon in form as effeirs; and thereto we constitute

our procurators, &c. In witness whereof, &c.

In this bond there is a clause of relief in favour of the cautioner; but the cautioner may chuse to have a deed in his own possession capable of operating his relief.

#### Bond of Relief to the Cautioner.

I. C B. CONSIDERING that E F has become cautioner for me, in a confirmation at my instance, before the commissary of executor dative qua nearest in kin to the deceased A B, my father, for the fum of the bond of cautionry in the faid confirmation more fully bears; THEREFORE, and in order to RELIEVE the faid E F of his cautionary engagement, I hereby BIND and OBLIGE myself, my heirs, executors and fuccessors whomsoever, to war-RANT, FREE, RELIEVE, harmless and skaithless KEEP, the faid E F, his heirs and fuccessors, of his cautionary engagement in the faid confirmation, and fums of money, principal, interest, and penalties therein contained; AND ALSO of all cost, skaith, damage, interest, and expense that he or his foresaids shall happen to sustain or incur thereby, any manner of way; AND, for that purpole, to APPEAR in the faid commissary court, or any judicatory when called upon, AND ACCOUNT for the faid whole fums to any one having interest; fo as thereby to DEFEND and FREE the faid E F. and his foresaids, from all suits and actions competent against him as cautioner for me in the faid confirmation, and of all the expense he may be put to in consequence thereof, in any manner of way, and that under the penalty of

AND

And I consent to the registration hereof in the books of Council and Session, or other Judges' books competent, to have the strength of a decree of the judges thereof interponed thereto, that letters of horning on six days' charge, and all other execution necessary, may follow hereon in form as esseits; and thereto I constitute

my procu-

rators, &c. In witness whereof, &c.

The caution being received, the commissary, on the application of the claimant, confirms the executor in his office of executor, and gives him a power to pursue for, and intromit with, the estate of the deceased. On this an act is extracted, of the following tenor.

#### Testament Dative of Umquhil A B.

The TESTAMENT DATIVE and INVENTORY of the goods, gear, debts, and fums of money which were pertaining, belonging, and addebted, and resting owing to umquhil A B, at the time of his death, who died on the day of years, \* FAITHFULLY MADE and GIVEN UP by C

<sup>\*</sup> In general, the time of the executor's death is left blank.

B, fon of the faid deceased AB, and only executor dative, qua nearest in kin decensed to him, and that by decree of the commissary of as the same, dated the , in itself at more length purports.

#### Follows the Inventory.

In the first, the faid A B had pertaining and belonging to him at the time of his decease forefaid, the goods and gear after written, of the respective values and prices following, viz.—(here the articles and their value are put down)—EXTENDING the values and prices of the goods and gear before mentioned, in haill, to the sum of gil. 6s. id. Sterling, agreeably to a valuation thereof, made , of date In and by to the half of which household furniture, L M, the widow of the faid AB has right, in virtue of the contract of marriage entered into betwixt her and the faid deceafed A B, bearing date INDE, to be given up and con-FIRMED, the other half of the faid household furniture which belonged to the defunct, amounting

is 547l. 16s. 3d.

Lib. B. D.

Summa of the Inventory.

V°—XLVII. XVI. III.

Follows

to 45l. 13s. 04d. Sterling, which, in Scots money,

#### Follows the Debts resting to the Defunct.

ITEM, there was addebted, and resting owing to the defunct, at the time of his decease foresaid, the several sums of money after written, by the persons after named, viz.—(here the names of the debtors, the amount of their debts, and the nature of the woucher, is put down)—EXTENDING, the debts and sums of money before written, in haill, to the sum of 421. 38. 14d. Sterling, which, in Scots money, is 5051. 178. 3d.

Scots,	Lib.	В.	Ď.
Summa of the deceased.	} v∘v.	XVII.	III.
E Summa of the	Lib.	В.	D.
Summa of the Summa of the inventory with the debts.	laj. LIII.	XIII.	VI.
<b>5</b> .			

MASTER R. S. commissary of , specially constituted for confirmation of testaments, understanding that, after due summoning and lawful warning, made by public form of edict, openly as effeirs, of the executors, testamenters, &c. of umquhil A B, the defunct before designed, and all others having or pretending to have interest in the said matter, To have COMPEARED VOL. V. \* Q q before

before us judicially, upon a certain day now bygone: That is to say, to have heard and feen executors-dative DECERNED, GIVEN IN, ADMIT-TED and CONFIRMED to the faid defunct, and in and to the goods, gear, debts, and sums of monev before written; or else to have alleged, &c.; with certification, &c.; I DECERNED thereintill, as my decree, of date forefaid, given thereament, bears; CONFORM whereunto, I, in his Majesty's name and authority, MAKE, CONSTITUTE, OR-DAIN and CONFIRM, the faid C B, only executordative qua nearest in kin to the said defunct, AND IN and To the goods, gear, debts and fums of money before written; with full power to the: faid executor to INTROMIT with, UPLIFT and RE-CEIVE the same, GRANT DISCHARGES thereof, and, if needful, to PURSUE therefore; AND, GE-NERALLY, every other thing thereanent To Do. that to the office of an executor qua nearest of kin is known to appertain; PROVIDING the faid executor shall make just count and reckoning of his intromissions therewith, when and where the same may be legally required; whereupon, and that the goods and gear, debts and fums of money before written, shall be made FREE and FORTHOM-ING to all parties having interest therein, as law will, EF became cautioner, as an act made thereanent bears. Given under the seal of office of the commissaries of , and figned by the clerk

clerk of court, on this and the preceding pages, AT, the day of years.

Signed by the Clerk of Court.

Such is the form by which the executordative is confirmed; and which, vesting the particulars given up, fully in him, enables him to use every form of diligence for recovering payment of the debts, or acquiring possession of the moveables.

#### Executor Nominate.

In completing the title of the executor-nominate, all that part of the procedure, in the confirmation of an executor-dative, by which he is decerned executor, is unnecessary. The appointment by the deceased supplies the place of the commissaries' decree decerning the executor. In practice, therefore, the deed containing the nomination, whether it be a latterwill, a general disposition, \* or a trust-deed, is O q 2

<sup>\*</sup> Where the general disposition does not contain a nomination of the disponee as executor, he may still be confirmed; but he must be decerned executor by a previous decree of the commissary, in the same way as in the case of an executor-dative.

given in to the clerk of court, and, with it, the inventory of the estate to be confirmed. The extract given out is in the following terms:

#### Testament Testamentary of Umquhil A B.

THE TESTAMENT TESTAMENTAR, and IN-VENTORY of the debts and fums of money whichwere addebted and resting owing to umquhil A B at the time of his death, who died at day of . MADE and GIVEN up by himself on the—(the date of the will)—in so far as concerns the nomination of his executors, AND NOW MADE and GIVEN UP by C B, in fo far as concerns the inventory of the faid defunct, his debts and fums of money after written; which C B, the faid umquhil A B did nominate, con-STITUTE and APPOINT, to be his fole executor, and universal legatar and intromitter with his whole effects, goods and gear, and others whatfoever-(this part must be expressed in the terms of the deed)—and that by his latter-will, bearing date : WHICH LATTER-WILL is recorded in the books of . the day , and is herein after engroffed. α£

#### Follows the Inventory.

In the first place, the faid umquhil AB had addebted and resting owing to him, at the time

time of his death, the sum of 50l. Sterling of rents, or arrears of rents, due to him by the tenants of his lands in the shire of , extending, the said sum of 50l. Sterling, in Scots money, to 600l.

Summa of the Juventory. Lib. VI.c

Follows the Defunct's Settlement.

### I, A, &c.—(here the deed is copied verbatim.)

MASTER R. S. commissary of , fpecially constituted for the confirmation of testaments, by the tenor hereof, in his Majesty's name and authority, ratify, approve, and confirm the faid defunct's fettlement before written, and inventory forefaid, of his debts and fums of money, in fo far as the fame is given up altenarly; AND we give and commit the intromission therewith to the faid C B, executor forefaid, with full power to him to uplift, receive, and dispose thereupon, grant discharges thereof, and, if needful, to purfue therefore, and, generally, every other thing thereanent to do, which to the office of an executor-nominate is known to belong: Providing ALWAYS he renders just count and reckoning of his intromissions, when and where the same shall be legally required of him; whereupon, and that the debts and sums of money before written, in so

far as the fum is given up allenarly, shall be made free and furthcoming to all parties having interest therein as law will, E F became cautioner, as an act made thereanent bears. Given under the seal of office of the commissariot of and signed by the clerks of court, upon this and the preceding pages, at , the day of

It is by this extract, that the title of the executor appointed by the deceased is completed to any subject to which, in the course of his management, he may find it necessary to make up a title; and caution is found by him in the same way as in the confirmation of an executor-dative.

#### CHAP. III.

OF THE KING'S RIGHT AS ULTIMUS HERRES, OR AS SUCCEEDING TO A BASTARD; AND OF THE TITLES BY WHICH THE PROPERTY, HERITAGE OR MOVEABLES, IS GIVEN OUT BY HIS MAJESTY.

By the law of the realm, his Majesty succeeds to all property, heritable or moveable, to which there is no owner;—quod nullius est, cedit

proprietor has died intestate, to whom no one can prove propinquity, or where the deceased was a bastard, without heirs of his own body, and therefore a person to whom no one can prove propinquity, his Majesty succeeds to the estate of such person, whether it consists of heritage or moveables.

The heritage may have been held of his Majesty by the deceased; or it may have been held of a subject superior. In the former case, the property is consolidated ipso jure in the person of his Majesty; in the latter case, his Majesty, as he cannot hold of a subject, must gift the right to a donatory. This donatory obtains a declarator of his right as donator; he is then presented to the subject superior by a letter from his Majesty under the quarter seal; and, on that, is received by the superior as vassal, in the place of the deceased.

When lands, of which his Majesty is superior, are gifted, the donator must, in like manner, obtain a decree of declarator, and afterwards a signature in Exchequer, as the warrant of his infestment in the lands holding of his Majesty. The following are examples of these forms, both when his Majesty succeeds

as ultimus bares, and from the bastardy of the deceased.

Gift of Ultimus Hæres, with an Alteration applicable to the Case of Bastardy.

Our Sovereign Lord, with the special advice and confent, &c.—(in common form)—on-DAINS a letter of gift to be made and passed under his Majesty's privy seal, in due and competent form, giving, granting and disponing, likeas his Majesty, with consent foresaid, GIVES, GRANTS and DISPONES, to B, his heirs or affignees whomsoever, all and fundry estates and effects, heritable and moveable, with title-deeds and vouchers thereof, which formerly pertained to A, at the time of his death, and now to his Majesty. and fallen into his Majesty's hand, and at his gift and disposal by reason of ultimus hæres, laws and practice of the kingdom, and inherent privilege of the Crown, through the faid A his death without heirs lawfully begotten, or any other person within the degrees of kindred, who can prove propinquity to him, and who, jure sanguinis, may fucceed to him therein; and without lawful disposition thereof made by him at any time in his life, or by whatfoever other manner of way, the fame now falls, vaiks, and becomes in his Majesty's hands, and at his gift and disposal; dispensing al-

ways

ways with the generality for ever; WITH FULL POWER-(or, in the case of bastardy, you stop at the above expression ' By reason of ultimus hæres,' and proceed in these terms—By reason of bastardy, laws and practice of the kingdom, and the inherent privilege of his Majesty's Crown, through the faid A his being born bastard, and deceasing bastard, without lawful iffue of his own body, or lawful disposition made by him of his said estate and effects at any time in his life; WITH FULL POW-ER)—to the faid B, as donator foresaid, and to his heirs and affignees above specified, to intromit with, uplift and receive, the whole goods, gear, debts, and fums of money and others above difponed, both heritable and moveable, formerly pertaining to the faid A, and now to his Majesty, by reason foresaid, and thereupon to use and dispose at their pleasure, and, if need be, to call and pursue therefore as accords of the law; decrees of declarator, and others in the premifes, to obtain and recover; and the same to due execution cause be put; compound, transact, and agree thereanent; and, upon payment, to grant difcharges, which shall be sufficient to the receivers: and to do what else the faid A might have done at any time in his life, or as his Majesty, with confent foresaid, might do therein, by the laws and practice of this kingdom, at any time fince his death; QUIETLY, &c.; BUT any REVOCATION. &c.; AND that the faid letter of gift be extended in in ample form, with all clauses needful. GIVEN AT, &c.

Summons of Declarator of Ultimus Hæres, with Changes applicable to the Case of Bastardy.

George, &c. Our Lovite B, donator after mentioned, and our advocate, for our interest, That we, with the consent of the Lord Chief Baron of our Court of Exchequer in that part of Great Britain called Scotland, and the remanent Lords Barons of the faid Court, by gift under the quarter seal of the said kingdom of Scotland, of date , GAVE, GRANTED and DISPONED, and for us and our royal fuccessors perpetually CONFIRMED, to the faid B, and his heirs and affignees whom foever, heritably, ALL and WHOLE -(here insert the lands contained in the gift)—which lands and others above differed, with the pertinents. pertained heritably of before to the deceafed A, and, at the time of the faid gift, pertained heritably to us, and fell into our hands, and at our royal gift and disposal, by and through the said A dying without heirs lawfully begotten of his body; and there being no person who can prove the remotest propinquity, and succeed to him therein—(or, where it is a declarator of bastardy, say, " fell into our hands, and at our royal gift and disposal, by reason of bastarday, laws and practice

practice of Scotland, and inherent privilege of our Crown, by the faid A being born bastard, and deceasing bastard without heirs lawfully begotten of his body, or lawful disposition made by him to any person or persons, at any time of his life; " then, in either case, proceed as follows)—
TO BE HOLDEN, the said lands and others foresaid, in manner mentioned in the said gift, as the same, containing precept of sasne, with the instrument of sasne following thereon, under the hand of

, notary public, dated and duly registered , in themselves more fully bear. THEREFORE, it oUGHT and SHOULD be FOUND and DECLARED, by decree of the Lords of our Council and Session, that the lands and others above specified, with the pertinents, pertained heritably of before to A; and that, at the time of the faid gift, the same pertained and belonged to us, fell into our hands, and were at our royal gift and disposal, by reason foresaid; and consequently, that fince the faid gift, and in all time coming, the same pertain and belong to the purfuer, our faid donator and his foresaids, to be used and disposed of by him or them, as their own proper lands and heritage in all time coming, after the form and tenor of the faid gift, instrument of fafine thereupon, and laws and daily practice of Scotland, used and observed in the like cases in all points. Our will is HEREFORE, that, on fight hereof, ye pass, and, in our name and authority, lawfully summon, warn, and charge— (in the case of ultimus hæres, it must be an edictal citation against all and sundry; in the case of basturdy, the person who would have succeeded, had the deceased not been a bastard, or his widow, if he left one, or his executor)—personally, or at their respective dwellingplaces, and all others having or pretending to have interest in the matter above libelled, by open proclamation at the market cross of , and other places needful, &c.

SIGNATURE of ULTIMUS HERES, with Alterations in regard to Bastardy.

OUR Sovereign Lord, with the special advice and confent of . Lord Chief Baron of his Majesty's Court of Exchequer in that part of Great Britain called Scotland, Esquires, remanent Barons of his Majesty's said Court of Exchequer, ordains a charter to be made and passed under the great seal appointed by the Treaty of Union to be kept and used in Scotland, in place of the great feal thereof formerly used there, giving, granting and disponing, and for his Majesty and his royal successors perpetually confirming, likeas his Majesty, with advice and confent foresaid, by these presents, GIVES, GRANTS and DISPONES, and for him and his royal fuccessors perpetually confirms, to his Majesty's

Majesty's lovite B, his heirs and assignees whomfoever, heritably and irredeemably, ALL and WHOLE—(here insert them)—WHICH LANDS and others pertained heritably of before to the deceased A, holden by him of his Majesty and his royal predeceffors, immediate lawful superiors thereof, and are now fallen and become in his Majesty's hands, and at his royal gift and disposal, by reason of ultimus HERES, laws and practice of this realm, and inherent privileges of his Matesty's Crown, by and through the said A deceasing without lawful heirs existing of his own body. or any other person within the degrees of kindred, who can prove propinquity to him, and who, jure sanguinis, may fucceed to him therein, and without lawful disposition thereof made by him at any time in his life-(or, where it proceeds on bastardy, then say, Which lands and others pertained heritably of before to A, holden by him of his Majesty and his royal predecessors, immediate lawful superiors thereof, and are now fallen and become in his Majesty's hands, and at his royal gift and disposal, by reason of bastardy, laws and practice of this realm, and inherent privilege of his Majesty's Crown, and by and through the said A his being born bastard, and having deceased without lawful heirs existing of his own body, or lawful disposition thereof made by him at any time in his life)—with full power to the faid B and his foresaids, to intromit with, uplift, ask and receive,

granting, and disponing, and, for himself and his royal fucceffors, perpetually confirming, to his Majesty's lovite B, and his heirs and assignees whomsoever, ALL and WHOLE—(here take in the lands)—and all other lands, heritages, tenements, annualrents, tacks, possessions, and others whatfoever, as well not named as named, which formerly belonged to the faid A at the time of his death, and now pertain and belong to his Majesty, and which have fallen into his Majesty's hands in manner beforementioned: AND SICKLIKE, NO-MINATING and PRESENTING. likeas his Majesty. by these presents, with advice and consent forefaid, nominates and presents the faid B and his forefaids, vassals and free tenants to the said M, his heirs and fuccessors, in all time coming, in the forefaid lands and others holden of them; TO BE HOLDEN by the faid B and his forefaids. in the same manner, and as freely, as the said A, and his predeceffors and authors, hold, or could have held the same; REQUIRING hereby, the said M and his forefaids, immediately on fight hereof, and as they shall be answerable, to ENTER and RECEIVE the faid B, and his forefaids, vaffals in the faid lands and others holden of them; and to GRANT them fufficient charter of the fame, containing precepts of fasine, and other necessary claims; the faid B and his foresaids doing and performing to the superior, whatever is incumbent on them by law, for their faid entry; As ALSO, ASSIGNING and

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DISPONING, likeas his Majesty, by these presents, with advice and confent foresaid, Assigns, TRANS-FERS and DISPONES to the faid B, and his forefaids, NOT OLNY the whole writs and evidents, as well old as new, of the faid lands and others above specified, made, granted and conceived in favour of the faid A, or his foresaids, and authors; BUT ALSO, the whole rents, farms, profits and duties of the faid lands and others abovementioned, for all years and terms bygone, and yearly and termly in all time coming; with full power to the faid B, as donator forefaid, and his heirs and assignees whomsoever, to Do, and cause TO BE DONE, ALL and SINGULAR whatever things we could have done before granting of these presents. or could cause to be done, by the laws and practice of Scotland; AND THAT freely, quietly, well and in peace, without any revocation or obstacle whatever; DECLARING, that it shall be lawful to the faid B and his foresaids, to possess the said lands and others abovementioned, either by virtue of this present gift, or of any other right acquired, or to be acquired by them, and to ascribe their title to both or either of these, the one without prejudice to the other, and without any extinction or confusion of rights; and that the said GIFT and LETTER of PRESENTATION be extended in most ample form, with all clauses needful. GIVEN, &c.

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This fignature is the warrant of the letters of presentation, which are prepared by the keeper of the quarter seal.

Charter by a Subject Superior on a Gift of Bastardy.

Be it known to all men by this present charter, that I, M, immediate lawful superior of the lands and others after mentioned. IN OBEDI-ENCE to a presentation issued by his Majesty, uttder the testimonial of the great seal, directed to me, of the date, and to the effect more particularly after mentioned, have GIVEN, GRANDED and DISPONED, as I, by these presents, give, GRANT and dispone, to and in favour of B; his heirs and affignees whomfoever, heritably and irredeemably, ALE and WHOLE—(here take in the lands)-which LANDs and others pertained heritably of before to A, who having died a baftard, without lawful heirs of his own body, and without lawful disposition made by him, the same fell to his Majesty, by virtue of his royal prerogative and the laws of this country, and are at his royal gift and disposal; and his Majesty, by a letter of presentation under the quarter seal, commonly called the testimonial of the Great Seal, dated , addressed to me, did nominate and present the said B and his foresaids

to be heritable tenants and vassals to me in the foresaid lands, in the place of the said A, my former vassal, and required me, as superior thereof, to receive the said B and his foresaids as vassals and heritable tenants therein, and to whom the writs and evidents of the said lands are thereby conveyed and transferred, as the said letters of presentation in themselves more sully bear; TO BE HOLDEN, the said lands and others foresaid, by the said B, and his heirs and assignees, of the, my heirs and successors, immediate lawful superiors thereof.—(This style goes on in the common form of the charter.)

In one or other of these ways the donator will be insest in the subjects conveyed to him by the Crown, where the deceased has been insest in the subjects at the time of his death. But it may happen that the deceased had only a personal right to lands; in which case, the donator, by the gift and decree of declarator, will have acquired the complete right to the unexecuted procuratories and precepts in the progress. Thus, the donator may recover the title deeds, and may complete his right to the estate, by taking insestment on the unexecuted precept, or obtain charters on the unexecuted procuratories.

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#### LEGITIMATION.

This head may be closed with letters of legitimation by the Sovereign, by which he legitimates a bastard. But it is proper to recollect, that a baftard, in one fense, cannot be legitimated by his Majesty. He cannot be made to acquire the rights of a person born in lawful wedlock: He cannot represent his father, nor be ferved heir to him. This would be to exclude others, and to alter the law of private property; a power which his Majesty does not possess: His Majesty (as the foregoing deeds prove) has certain rights; and these his Majesty may give up. In place of retaining in his own hands what would have fallen on the death of the bastard, his Majesty may confer the property on a certain description of persons connected with the bastard, and pointed out in the letters. This affects his Majesty's own right only, and reaches no farther; and is therefore fully within the royal power. Beyond this, these letters will be found not to extend.

#### Signature of Legitimation of a Bastard.

Our Sovereign Lord, with the special advice and consent, &c. (in common form)—ORDAINS a letter of legitimation to be made and passed under his Majesty's privy seal, in due and competent form, giving and GRANTING, likeas his Majesty, with confent forelaid, by these presents, gives and GRANTS to B, ballard, natural fon to A, procreated betwixt him and , full power, faculty and warrant, during all the days of his lifetime, whether in liege poustie and perfect health, or on deathbed, or even in ipso articulo mortis, freely to give and dispone all his estate and effects whatfoever, heritable or moveable, belonging, or which shall belong to him, and that to and in favour of any person he pleases; AND LIKE-WAYS full power to make a testament, and thereby, or by affignation or otherways, to dispose upon his estate, present and to come, and legate the fame at pleasure, notwithstanding of bastardy wherein he was procreated and born, and notwithstanding of his Majesty's privilege, by law, of the escheats of bastards: AND, in like manner, his Majesty, with consent foresaid, STATUTES, WILLS and DECLARES, that it shall be lawful to the said B, to make and exerce all lawful facts, judgments, and deeds in judgment, or outwith the same, and to possess and enjoy all other privileges, offices, Rr3 honours.

honours, dignities, lands, possessions, and others whatfoever, ficklike, and as fully and freely in all respects, and to all intents and purposes, as if be had been born in lawful wedlock; and that it shall be lawful to those descended of his body to ferve heirs to him, both in general and special. and to be retoured and infeft accordingly, notwithstanding the constant practice of this kingdom, and the inherent privilege of his Highness's Crown in relation to the escheats of bastardy, and notwithstanding of whatever other laws, common, civil or municipal, and acts of parliament of this realm, made or to be made thereanent; which his Majesty, for himself and his royal succeffors, with confent forefaid, by these presents RENOUNCES, or, in the option of the faid B, GIVES, GRANTS and DISPONES in his favour. with all action, pursuit and instance competent, or that may be competent to his Majesty, or his foresaids, thereupon, in all time coming; and that freely, quietly, well and in peace, but any revocation, contradiction, or obstacle whatever; AND that the faid letters of legitimation be extended in most ample form, with all clauses needful. &c.

It may be observed, that these letters sometimes go farther, and give a right of succession to certain lines of heirs connected with the bastard, either through his father or through his This mother, according to the intention of the letters; of which you have a very ample form in the decision, Ramsay v. Gowdie, 1758, 4th January, Morrison's Dict. p. 1359. The letters of legitimation in that case bear,—'Volumus' et concedimus, et pro nobis et successoribus' nostris, DECERNIMUS et ORDINAMUS, quod' propinquior agnatus vel cognatus suus, ex parte patris vel matris, erit ipsius hæres eigen in omnibus suis terris;' and so it goes on to prescribe the manner of completing the title of the heir, &c.—This closes our present subject.

Having, in the circle of deeds contained in this and the preceding volumes, explained those forms by which rights, heritable or moveable, are constituted, transmitted or extinguished, or raised up of new in the person of the heir;—it remains only, in order to complete the System, that I should give the forms of actions by which these rights are declared by the sentence of a Judge; and the forms of diligence by which the sentence of the Judge, or the obligations of parties, are enforced. To these objects I shall dedicate the remaining volumes.

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